Supplement

TO

MONTGOMERY'S

LICENSING LAWS:

CONTAINING

THE INTOXICATING LIQUORS (Sale to Children) ACT, 1901,

THE LICENSING ACT, 1902,

AND ALL RECENT DECISIONS RELATING TO THE

SALE OF INTOXICATING LIQUORS,

AND TO

THEATRES, MUSIC, DANCING AND BILLIARDS.

BY

R. M. MONTGOMERY,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

LONDON:

EET AND MAXWELL, LIMITED,

3, CHANCERY LANE, W.C.

Law Publishers.

1902.

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PREFACE.

The Licensing Act, 1902, has made one change of great importance in regard to the supply of Intoxicating Liquor, and a large number of more or less important alterations in regard to the administration of the Licensing Laws. The one great change is the requirement that Clubs shall be registered. A considerable class of persons, consisting of the secretaries, proprietors, or managers of Clubs, to whom other Licensing Acts were of no direct importance, have thus become directly concerned with the Licensing Act of 1902, and their wants have been kept in view in the following pages.

The first Chapter has been devoted to the Registration of Clubs, and the information that seems likely to be of importance to Club Secretaries has been placed in that Chapter.

The remaining Chapters follow the order and arrangement of the Second Edition of the Author's "Licensing Laws," and this volume forms a Supplement to that Work, which is referred to under the title of "main work."

In this way not only have the changes in the law effected by the Licensing Act, 1902, been set out, but other recent enactments, such as the Intoxicating Liquors (Sale to Children)

Act, 1901, and all recent decisions of the Courts, have been brought under notice in their appropriate places.

The annual Licensing Meeting and its adjournments will for the future be held in February and March, and licenses will run from April 5th to April 5th (as has always been the case in Middlesex and Surrey), instead of from October 10th to October 10th. There has, however, been an oversight with regard to billiard licenses which is explained on page 60. What appears to be another oversight occurs in regard to spirit dealers' additional licenses, and is explained on page 28.

Another change is the institution of a list of habitual drunkards, or persons who may not legally be supplied with intoxicating liquor.

It is also noticeable that the new powers given to Courts of Summary Jurisdiction increase the number of cases in which an appeal lies to Quarter Sessions (see page 74).

In the Appendix will be found the text of the Intoxicating Liquors (Sale to Children) Act, 1901, the Licensing Act, 1902, and several forms prescribed by the Home Secretary under the latter Act.

R. MORTIMER MONTGOMERY.

5, Crown Office Row,
Temple, E.C.
1*st November*, 1902.

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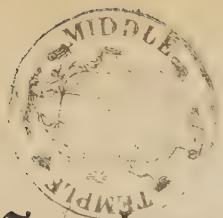
ADDENDUM.

Insert at page 64, after line 6:—"A holder of a license is guilty of an offence under sect. 2 of the Intoxicating Liquors (Sale to Children) Act, 1901, if he delivers to a child whom he knows to be under fourteen a properly corked bottle which is not in fact properly sealed, although the license holder honestly believes it to be properly sealed. (*Brooks* v. *Mason*, W. N. (1902) 193; 114 L. T. N. 10."



Supplement

TO

MONTGOMERY'S LICENSING LAWS.

CHAPTER I.

REGISTRATION OF CLUBS.

Before the passing of the Licensing Act, 1902, there was no necessity for registering, and no means of registering, a club simply as a club in which intoxicating liquor was supplied. But owing to the unsatisfactory position of many clubs, some genuine, some only called clubs in order to escape the provisions of the Licensing laws, an entirely new departure has been made, and the Licensing Act, 1902, provides a means of registering certain clubs as clubs, and makes the supply of intoxicating liquor upon the premises of an unregistered club illegal (*a*).

What Clubs require Registration.—Every club which occupies a house or part of a house or other premises which are habitually used for the purposes of a club, and in which any intoxicating liquor is supplied to members or their guests, must be registered in the manner provided by the Licensing Act, 1902 (*b*).

A club requires registration, whether it be a members' club or a proprietary club (*c*).

(*a*) L. A. 1902, § 26 ; taken together with L. A. 1872, § 3.
(*b*) L. A. 1902, § 24 (1).
(*c*) See L. A. 1902, § 32, "Secretary."

Characteristics.

A club requiring registration must then be a club with three distinguishing characteristics :—

1. It must occupy premises.
2. Those premises must be habitually used for the purposes of a club.
3. In those premises intoxicating liquor must be supplied to members or their guests (*d*).

A club to which any one of these three characteristics does not attach does not require registration under the Act, and there is, speaking strictly, no power of so registering it (*e*).

Occupation.

1. *Occupation of Premises.*—The occupation must be of a house, part of a house, or other premises; and, no doubt, the "other premises" must be premises of the kind suggested by the words "house and part of a house." In fact, the words "other premises" will no doubt be construed in the *ejusdem generis* sense. A flat would be included, or a room in a house or flat, or the pavilion of a golf or cricket club, or the boathouse of a boating club.

What is meant by occupation, or, rather, what the word "occupies" means, in this section is much more difficult to say until the word has received judicial interpretation. It is submitted that it is not used in any well-defined legal sense, and that a much less definite legal position than that required for purposes such as rating is intended. On the other hand, probably something more than the mere casual taking of a room in which to hold an annual meeting or a supper is necessary; and it is submitted that a club occupies premises within the meaning of this section when it habitually uses particular premises for the purposes of the club, provided there is also temporarily exclusive use. For example, it is submitted

(*d*) L. A. 1902, § 24 (1). (*e*) See L. A. 1902, § 25 (1).

where a room is hired by a club for one night a week from an innkeeper under an agreement of tenancy (*f*), there is sufficient occupation of premises to make registration necessary.

User for purposes of a club.

2. *Habitual User for the Purposes of a Club.*—The user must be habitual, not merely casual. It is submitted that the words "for the purposes of a club" mean for the purposes usually understood as "purposes of a club"—that is, social, literary, scientific, athletic; and that premises used by a club merely for the distribution of goods, including intoxicating liquor, amongst its members do not require registration. Nor would a mere store-room require registration, although occupied and habitually used by a club for mere storage purposes. It is, however, possible that the words mean premises habitually used for the purposes of (that is, for its purposes by) *any* club; but it is hardly conceivable that the task can be intended to be thrown upon the secretary of one club to discover if the premises are habitually used by another club. It is also possible that the words "a club" may be read as if they were "the club" (*g*).

3. *Supply of Intoxicating Liquor to Members or their Guests.*—The word "supply" covers all cases of distribution, whether or not constituting a sale. It is not clear whether habitual supply is intended, or whether the mere casual supply of intoxicating liquor upon a special occasion would render registration of the club necessary. As the word "habitually" is placed in another

(*f*) See *Duncan* v. *Dowding*, [1897] 1 Q. B. 575; 66 L. J. Q. B. 362; 76 L. T. 294; 13 T. L. R. 290; 61 J. P. 280; 45 W. R. 383; 18 Cox, C. C. 527.

(*g*) But as the substitution of the word "the" for the word "a" was proposed in the committee stage of the Bill and rejected at the instance of the Home Secretary, this is presumably not what was intended, although this fact is not available for legal argument on the construction of the Act.

part of the section, and must therefore have been in the mind of the legislature, but is not placed before the word "supplied," it seems a fair argument that habitual supply is not necessary, and that mere casual supply upon a special occasion renders the club liable to registration. On the other hand, how a secretary is to tell in the January of each year whether the club premises may be casually used for the supply of intoxicating liquor during the year it is hard to see, and yet it could hardly be suggested that the club could be registered after January in each year as a new club about to be opened (*h*).

No doubt the best course for a secretary to adopt is to register his club if there is any chance of intoxicating liquor being supplied upon the premises during the year. There is, it is true, no power to register unless intoxicating liquor is supplied, but it is difficult to see how the clerk to the justices can refuse to register any club tendered for registration provided the particulars specified in sect. 25, sub-s. 2, are supplied to him.

Nor is it clear whether the supply must be supply by the club. The condition of the law before the statute was passed, and the circumstances which gave rise to its enactment, would suggest that supply by the club is necessary to bring the club within the section. Before clubs were registered the difficulty was to keep any control over clubs, because a distribution among members of liquors jointly owned by the members was held not to be a sale within the meaning of the Licensing Acts, and the word "supply" has undoubtedly been employed in order to cover distribution amongst co-owners. There is, however, no limitation in the section placed upon the word "supply," and it is therefore submitted that supply includes a gift of liquor to the members or their guests, or a sale of liquor by the holder of a license to

(*h*) See L. A. 1902, § 25 (4).

the members or guests of a club occupying a room in his licensed premises.

Intoxicating liquor means "spirits, wine, beer, porter, cider, perry, and sweets, and any fermented, distilled, or spirituous liquor which cannot, according to any law for the time being in force, be legally sold without a license from the Commissioners of Inland Revenue" (*i*). Meaning of "intoxicating liquor."

Application for Registration.

By whom made.—Application for registration of a club is made by the secretary (*k*), or by any officer of the club or other person performing the duties of a secretary, and, in the case of a proprietary club where there is no secretary, by the proprietor of the club (*l*).

How and when made.—The application is made by furnishing to the clerk to the justices (*m*) of the petty sessional division in which the premises in which the intoxicating liquor is supplied are situated (*n*), a return containing the following particulars (*o*) :—

(a) The name and objects of the club;

(b) The address of the club;

(c) The name of the secretary, or other person performing the duties of secretary, or, in the case of a proprietary club without a secretary, the proprietor (*p*);

(d) The number of members (*q*);

(*i*) L. A. 1872, § 74; L. A. 1902, § 34 (1); 59 & 60 Vict. c. 14, § 2, and sched. 2.
(*k*) L. A. 1902, § 24 (1).
(*l*) L. A. 1902, § 32.
(*m*) L. A. 1902, § 25 (3).
(*n*) L. A. 1902, § 25 (1).
(*o*) L. A. 1902, § 25 (3).
(*p*) L. A. 1902, § 32.
(*q*) That is, the number of members at the time the return is made.

(e) The rules of the club relating to—

(i) The election of members and the admission of temporary and honorary members and of guests;

(ii) The terms of subscription and entrance fee, if any;

(iii) The cessation of membership;

(iv) The hours of opening and closing; and

(v) The mode of altering the rules (*r*).

Number of members.

If there are different classes of members, it is thought the number in each class ought to be supplied.

Signed by secretary.

These particulars must be signed by the secretary or other person acting in the capacity of secretary, and must be furnished in the month of January in every year, commencing with the year 1903 (*s*).

The secretary, or other person acting in the capacity of secretary (*t*), must also send, together with the above return, a statement signed by him that there is kept upon the club premises a register of the names and addresses of the club members, and a record of the latest payment of their subscriptions (*u*).

London.

If the premises in which the intoxicating liquor is supplied are situated within the district of a metropolitan police court, the return must be made to the clerk to that court; and if the premises are situated in the City of London, the return must be made to the clerk of special sessions (*x*).

City of London.

Oxford.

If the premises are in Oxford, and the club is composed mainly of members past or present of the University, the return must be made to the registrar of the Court of the Chancellor of the University (*y*).

New club.

In the case of a new club requiring registration about

(*r*) L. A. 1902, § 25 (2).
(*s*) L. A. 1902, § 25 (3).
(*t*) L. A. 1902, § 32.
(*u*) L. A. 1902, § 25 (3).
(*x*) L. A. 1902, § 31.
(*y*) L. A. 1902, § 25 (7).

to be opened after the 1st January, 1903 (*z*), the return must be furnished by the secretary, or person acting in the capacity of secretary (*a*), before the opening of the club (*b*).

No special form of return giving the particulars set out above is required by the Act, but as the register of clubs which the clerk to the justices has to make up from these returns must be in a particular form prescribed by the Secretary of State, it will obviously be a convenience that the same form should be adopted by secretaries in making their returns (*c*). Form of return.

The secretary of the club must pay a registration fee of 5*s*. to the clerk to the justices upon every return (*d*). Registration fee.

Duties of Clerk to Justices.—The clerk to the justices in every petty sessional division—(in the district of a metropolitan police court the clerk to that court, and in the City of London the clerk of special sessions (*e*), and in Oxford in the case of any club composed mainly of past or present members of the University, the registrar of the Court of the Chancellor of the University (*f*))—must keep a register of all clubs which should be registered under the Licensing Act, 1902, within the division (*g*). But this provision seems only to mean that he should place upon the register those clubs of which the statutory particulars are supplied to him, and it seems further to be intended that he should enter in the register of clubs every club the statutory particulars of which are supplied to him by the secretary, whether such club is in fact of the class requiring registration or not. His duties seem to be purely ministerial, and to consist in duly entering upon the register the clubs the statutory particulars of which are supplied to him. London. City of London. Oxford University.

(*z*) L. A. 1902, § 34 (3).
(*a*) L. A. 1902, § 32.
(*b*) L. A. 1902, § 25 (4).
(*c*) For form, see p. 99, *post*.
(*d*) L. A. 1902, § 25 (6).
(*e*) L. A. 1902, § 31.
(*f*) L. A. 1902, § 25 (7).
(*g*) L. A. 1902, § 25 (1).

He is to keep the register of clubs corrected up to date in accordance with the returns furnished by the secretaries (*h*).

Fee for registration.

He is entitled to a fee of 5*s*. on each return made by the secretary of a club (*i*).

Form of register.

The register is to be in the form (*k*) prescribed by the Secretary of State (*l*), and must contain :—

Items in register.

(a) The name and objects of the club ;
(b) The address of the club ;
(c) The name of the secretary, or person performing the duties of secretary, or, in the case of a proprietary club without a secretary, the proprietor (*m*) ;
(d) The number of members ;
(e) The rules of the club relating to—
  (i) The election of members and the admission of temporary and honorary members and of guests ;
  (ii) The terms of subscription and entrance fee, if any ;
  (iii) The cessation of membership ;
  (iv) The hours of opening and closing ; and
  (v) The mode of altering the rules (*n*).

Inspection of Register.—It is also the duty of the clerk who keeps the register to keep it open to inspection at all reasonable hours, by any inspector or superintendent of police, or any officer of the inland revenue, without fee, and by any other person on payment of a fee not exceeding one shilling (*o*).

(*h*) L. A. 1902, § 25 (5).
(*i*) L. A. 1902, § 25 (6).
(*k*) For this form, see p. 99, *post*.
(*l*) L. A. 1902, § 25 (1).
(*m*) L. A. 1902, § 32.
(*n*) L. A. 1902, § 25 (2).
(*o*) L. A. 1902, § 25 (5).

Striking off the Register.

When a club has been registered (which seems to mean when it has been placed upon the register, not when the statutory particulars for registration have been furnished), any person may make a complaint in writing alleging that the club should be struck off the register upon some or all of the following grounds:— Complaint.

Grounds.

(a) That the club has ceased to exist, or that the number of members is less than twenty-five; or,

(b) That it is not conducted in good faith as a club, or that it is kept or habitually used for any unlawful purpose; or,

(c) That there is frequent drunkenness on the club premises; or,

(d) That illegal sales of intoxicating liquor have taken place on the club premises; or,

(e) That persons who are not members are habitually admitted to the club merely for the purpose of obtaining intoxicating liquor (*p*); or,

(f) That the club occupies premises in respect of which, within twelve months next preceding the formation of the club, a license has been forfeited or the renewal of a license has been refused, or in respect of which an order has been made that they shall not be used for the purposes of a club; or,

(g) That persons are habitually admitted as members without an interval of at least forty-eight hours between their nomination and admission; or,

(h) That the supply of intoxicating liquor to the club is not under the control of the members or the committee appointed by the members (*q*).

(*p*) Cf. *Stevens* v. *Wood* (1890), 54 J. P. 742.
(*q*) L. A. 1902, § 28 (1).

The complaint.

The complaint must be made in writing (*r*) to a justice of the peace (*s*), and should be made to a justice having jurisdiction in the district of that court whose clerk keeps the register of clubs in which the club in question is registered.

Oxford University.

In Oxford, in the case of a club composed mainly of past or present members of the University, the court of summary jurisdiction is the Court of the Chancellor of the University sitting and acting under the Oxford University (Justices) Act, 1886 (*t*).

To whom summons to be directed.

A summons may then be granted in the ordinary way, and should, it is thought, be directed to the club and to its registered secretary (*u*), and must be served

On whom and how to be served.

on the secretary and on such other person (if any) as the court may direct (*x*). The summons may be served upon the secretary personally, or by leaving it with some person for him at his last or most usual place of abode (*y*). Service by leaving the summons for the secretary at the club premises appears to be insufficient, and the provision for service of documents by post contained in the Licensing Act, 1872, § 70, and therefore applying to documents required to be served by the Licensing Act, 1902 (*z*), seems not to relate to the service of a summons.

The hearing.

Upon the day appointed for the hearing in the summons, the case is heard by a court of summary jurisdiction (for which is substituted in Oxford, in the case of a club composed mainly of past or present members of the University, the Court of the Chancellor of the University, sitting and acting under the Oxford

(*r*) L. A. 1902, § 28 (1).

(*s*) L. A. 1902, § 28 (3); S. J. A. 1889 (52 & 53 Vict. c. 63), § 13 (11); S. J. A. 1848 (11 & 12 Vict. c. 43), § 29.

(*t*) L. A. 1902, § 28 (5).

(*u*) See L. A. 1902, § 28 (3).

(*x*) L. A. 1902, § 28 (3).

(*y*) 11 & 12 Vict. c. 43, § 1; and see *R.* v. *Farmer*, [1892] 1 Q. B. 637; 65 L. T. 736; 61 L. J. M. C. 65; 56 J. P. 341.

(*z*) L. A. 1902, § 34 (1).

University (Justices) Act, 1886 (*a*)) in the usual way; and if the court is satisfied by evidence of any of the following allegations set out in the complaint, viz. :—

(a) That the club has ceased to exist, or that the number of members is less than twenty-five; or,

(b) That the club is not conducted in good faith as a club, or that it is kept or habitually used for any unlawful purpose; or,

(c) That there is frequent drunkenness on the club premises; or,

(d) That illegal sales of intoxicating liquor have taken place on the club premises; or,

(e) That persons who are not members are habitually admitted to the club merely for the purpose of obtaining intoxicating liquor; or,

(f) That the club occupies premises in respect of which, within twelve months next preceding the formation of the club, a license has been forfeited or the renewal of a license has been refused, or in respect of which an order has been made that they shall not be used for the purposes of a club; or,

(g) That persons are habitually admitted as members without an interval of at least forty-eight hours between their nomination and admission; or,

(h) That the supply of intoxicating liquor to the club is not under the control of the members or the committee appointed by the members (*b*) ;

then the court may, if it thinks fit, make an order directing the club to be struck off the register (*c*).

(*a*) L. A. 1902, § 28 (5). (*b*) L. A. 1902, § 28 (1).
(*c*) L. A. 1902, § 28 (1).

Order disqualifying premises.

The court may also further order that the premises occupied by the club shall not be used for the purposes of any club requiring registration under the Licensing Act, 1902, for a specified period not exceeding twelve months in case of a first order, and not exceeding five years in case of a second or subsequent order (*d*).

Oxford University.

But the Court of the Chancellor of Oxford University has no power to make an order that premises shall not be used for the purposes of a club (*e*).

If an order disqualifying the premises is made, it may, for good cause shown, be at any subsequent time cancelled or varied by the court (*f*).

It seems that such a variation or cancellation of a disqualifying order may be made upon application by any person interested in the variation or cancellation of the order; but no doubt, before varying or cancelling an order of disqualification, the court will take whatever steps may be necessary to bring before the court the circumstances under which the original order was made.

Judicial discretion.

Although the court has a discretion as to whether it shall make an order striking the club off the register if any one of the allegations above set out is proved, its discretion is a judicial discretion.

Evidence on oath.

The court will take evidence upon oath as in other cases founded on a complaint and summons.

Club ceasing to exist.

(a) If the club has ceased to exist the court should, it is submitted, always strike it off the register.

Number of members.

If the number of members is proved to be less than twenty-five, no doubt the court will be influenced, in making or refusing to make an order striking the club off the register, chiefly by the general purpose and character of the club, and will probably refuse to strike the club off the register unless they think that the

(*d*) L. A. 1902, § 28 (4). (*e*) L. A. 1902, § 28 (5).
(*f*) L. A. 1902, § 28 (4).

main object of the club is the supply of intoxicating liquor, or that some ground exists on which they would be entitled to strike the club off the register, apart from the mere number of the members. The provision as to the number of members seems to be simply intended as a means of insuring that an alleged club is in fact a club with genuine constitution and membership, and carried on for ordinary club purposes.

Conduct of club as club.

(b) That the club is not conducted in good faith as a club seems to mean that the club has not a genuine constitution or membership, or that it is carried on chiefly for the benefit of some individual, and that the members have no effective control over or voice in the conduct and general management of the club. Probably a club in which the members had not directly, or through the medium of a committee elected by the members, the power of controlling the election of new members would not be considered to be conducted in good faith as a club.

It is also enacted that for the purpose of determining whether a club is conducted in good faith as a club, the court shall have regard to the nature of the premises occupied by the club (*g*).

This seems to mean that the court shall consider the nature of the club premises as tending to show whether a social, literary, scientific, or athletic club is likely to be carried on there, or whether what is called a club can only be intended as a drinking bar and cannot be intended to serve what are ordinarily understood as the purposes of a club (*h*).

Club kept for unlawful purpose.

A club kept or habitually used for any unlawful purpose seems to point chiefly at gaming or prostitution.

Illegal sale of liquor at club.

(d) Any "sale" of intoxicating liquor will be illegal if the premises are not licensed for the sale of intoxi-

(*g*) L. A. 1902, § 28 (2).
(*h*) See *Evans* v. *Hemingway* (1887), 52 J. P. 134; main work, p. 188.

cating liquor. The registration of a club under the Licensing Act, 1902, does not constitute the club premises licensed premises, or authorise any sale of intoxicating liquor therein which would otherwise be illegal (*i*). The question of what is a "sale" is discussed hereafter (*k*).

Premises previously licensed.

(f) If a club occupies premises in respect of which, within twelve months next preceding the formation of the club, a license has been forfeited or the renewal of a license has been refused, the right to strike the club off the register exists, even though the club was formed before the passing of the Licensing Act, 1902.

A "license" means a justices' license for the sale of any intoxicating liquor by retail (*l*).

An order that premises shall not be used as a club can be made under the Licensing Act, 1902, § 28, sub-s. 4; but the right to strike the club off the register because it occupies premises in respect of which such an order has been made attaches only so long as the order is in force, and not after the time mentioned in the order has expired or the order has been cancelled (*m*).

(h) That the supply of intoxicating liquor to the club is under the control of the members or the committee appointed by the members seems to mean not that the members should have any beneficial ownership of the intoxicating liquors supplied to members of the club, but that they should be in a position to determine what intoxicating liquors should be supplied to members and their guests, and at what prices they should be so supplied.

Search warrant.

A search warrant may be granted by a justice of the peace if he is satisfied, by information on oath sworn by any person, that there is reasonable ground for supposing that any registered club is so managed or carried

(*i*) L. A. 1902, § 24 (2).

(*k*) See p. 21, *post*.

(*l*) L. A. 1872, § 74, "License"; L. A. 1902, § 34 (1).

(*m*) See L. A. 1902, § 28 (4).

on as to constitute a ground for striking it off the register (*n*). The search warrant must be granted to a constable named therein (*o*), and must authorise him to enter the premises of the club, if need be by force, and inspect them, and take the names and addresses of any persons found therein, and seize any books and papers relating to the business of the club (*p*). A search warrant may be granted either before or after any complaint (under sect. 28, sub-s. 1) has been made, and any evidence obtained by means of such warrant could be used at the hearing of an application to strike the club off the register.

Register of clubs not evidence.

It is to be noticed that there is no enactment making the registers of clubs evidence of the facts required to be stated therein, as there is in the case of the similar registers of licenses (*q*), but the written statements made by the secretary of a club on application for registration of the club might be available for evidence in the ordinary way.

Appeal to Quarter Sessions.

If any person feels aggrieved by any order or conviction made by a court of summary jurisdiction, the person so aggrieved may appeal therefrom to a court of quarter sessions (*r*).

"Court of summary jurisdiction" means any justice or justices of the peace, or other magistrates by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law (*s*).

(*n*) L. A. 1902, § 29 (1).
(*o*) *Ibid.*
(*p*) L. A. 1902, § 29 (2).
(*q*) See L. A. 1872, § 58.
(*r*) L. A. 1872, § 52; L. A. 1902, § 34 (1).
(*s*) Interpretation Act, 1889 (52 & 53 Vict. c. 63), § 13 (11).

An order striking a club off the register of clubs is an order within the meaning of this section, as it follows upon complaint (*t*), and therefore an order striking a club off the register of clubs is subject to an appeal to quarter sessions (*u*).

An order directing that premises shall not be used for the purposes of any club requiring registration (*v*) is in the same way subject to appeal to quarter sessions.

Appeal by Special Case.

Any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the court to state a special case, setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the court decline to state the case, may apply to the High Court of Justice for an order requiring the case to be stated (*x*).

A special case may be stated under this section when proceedings have been taken for striking a club off the register of clubs (*y*).

Offences.

Omitting to make Return.—If the secretary, or person performing the duties of a secretary, or, in the case of a proprietary club without a secretary, the proprietor (*z*), of a club which requires registration under the Licensing Act, 1902, omits to make the return (that is, to give the

(*t*) Cf. *Boulter* v. *Kent JJ.*, [1897] App. Cas. 556; 66 L. J. Q. B. 787; 77 L. T. 288; 13 T. L. R. 538; 61 J. P. 532; 46 W. R. 114.

(*u*) The whole procedure upon appeal is set out in the main work, pp. 256—262.

(*v*) Under L. A. 1902, § 28 (4).

(*x*) 42 & 43 Vict. c. 49, § 33 (1).

(*y*) For full particulars of procedure, see main work, pp. 262—266.

(*z*) L. A. 1902, § 32.

statutory particulars within the appointed time) required by the Licensing Act, 1902, he is liable on summary conviction to a fine not exceeding 20*l.*, and in case of a second or subsequent offence, to imprisonment with or without hard labour for a term not exceeding one month, or to a fine not exceeding 50*l.*, or to both fine and imprisonment (*a*).

Making False Return.—If the secretary, or person performing the duties of a secretary, or, in the case of a proprietary club without a secretary, the proprietor (*b*), of a club requiring registration under the Licensing Act, 1902, makes a return which is to his knowledge false in any material particular, he is liable on summary conviction to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding 50*l.*, or to both fine and imprisonment (*c*).

A material particular seems to be a particular required to be given by sect. 19, sub-ss. 2 and 3, of the Licensing Act, 1902, but it may be that what is a material particular is a question of fact for the court.

Supplying or selling Liquor in Unregistered Club.—If any intoxicating liquor is supplied or sold to any member or guest on the premises of an unregistered club, the person supplying or selling such liquor, and every person authorising the supply or sale of such liquor, is liable on summary conviction to imprisonment, with or without hard labour, for a term not exceeding one month, or to a fine not exceeding 50*l.*, or to both fine and imprisonment (*d*).

The question again arises here (*e*) whether the supply at which this section is aimed is only supply by the

(*a*) L. A. 1902, § 30 (1).
(*b*) L. A. 1902, § 32.
(*c*) L. A. 1902, § 30 (2).
(*d*) L. A. 1902, § 26 (1).
(*e*) See p. 4, *ante*.

club, but it is submitted that supply by any person even by way of a free gift is within the section. Certainly sale by any person is within the section, and sale upon the premises of an unregistered club is an offence, even if such premises are premises in respect of which a license is held for the sale of intoxicating liquor and the person who sells is the licensee.

But it is submitted that sale or supply upon the premises of an unregistered club means sale or supply upon such premises while in use as club premises, and does not affect sale or supply upon such premises while being used in some other capacity. For example, a room in a public-house might be let to an unregistered club for one night a week under an agreement of tenancy (*f*); but a sale in this room at a time not covered by such tenancy, and when the room was not being used for the purposes of the club but merely as a part of the public-house, would not, it is submitted, be a sale on the premises of an unregistered club.

Meaning of "unregistered club."

"Unregistered club" means a club which requires under the Licensing Act, 1902, to be registered but is not registered, or which has been struck off the register (*g*).

It is submitted that the words of this definition are to be taken in their strict grammatical sense, and mean—

(a) A club which requires to be registered, and is not registered;

(b) A club which has been struck off the register, whether it requires registration or not.

It is to be noticed in support of the grammatical construction that there is no power to strike a club off the register on the ground that it does not require registration.

(*f*) See *Duncan* v. *Dowding*, [1897] 1 Q. B. 575; 66 L. J. Q. B. 362; 76 L. T. 294; 13 T. L. R. 290; 61 J. P. 280; 18 Cox, C. C. 527; 45 W. R. 383.

(*g*) L. A. 1902, § 32.

Keeping Liquor in Unregistered Club.—If any intoxicating liquor is kept for supply or sale on the premises of an unregistered club, every officer and member of the club is liable on summary conviction to a fine not exceeding 5*l.*, unless he proves to the satisfaction of the court that such liquor was so kept without his knowledge or against his consent (*h*). As to the meaning of "unregistered club," see p. 18, *ante*.

Search warrant.

If a justice of the peace is satisfied by information on oath that there is reasonable ground for supposing that any intoxicating liquor is sold or supplied, or kept for sale or supply, on the premises of an unregistered club, he may grant a search warrant to any constable (*i*). The search warrant must authorise the constable named in it to enter the premises of the club, if need be by force, and inspect them and take the names and addresses of any persons found therein, and seize any books and papers relating to the business of the club (*k*).

Supply of Liquor for Consumption off the Premises.—Intoxicating liquor shall not be supplied in a club for consumption off the premises except to a member on the premises; and if any person (1) supplies or (2) obtains any intoxicating liquor in contravention of this section, he is liable on summary conviction to a fine not exceeding 10*l.* (*l*).

"To a member on the premises" means to a member who is personally upon the premises and is there personally supplied. The section is intended to prevent the supply to a member's duly authorised agent of liquor for consumption by the member off the premises (*m*).

(*h*) L. A. 1902, § 26 (2).
(*i*) L. A. 1902, § 29 (1).
(*k*) L. A. 1902, § 29 (2); and see p. 14, *ante*.
(*l*) L. A. 1902, § 27.
(*m*) See *Davies* v. *Burnett*, [1902] 1 K. B. 666; 71 L. J. K. B. 355; 86 L. T. 565; 18 T. L. R. 354; 66 J. P. 406; 50 W. R. 391; and see p. 26, *post*.

Black list.

Supplying to Persons declared to be Habitual Drunkards.—Where a court in pursuance of the Licensing Act, 1902 (*n*), orders notice of a conviction to be sent to a police authority, the court must inform the convicted person that the notice is to be sent (*o*); and

Person on black list obtaining liquor at club.

(a) If the convicted person within three years after the date of the conviction purchases or obtains, or attempts to purchase or obtain, any intoxicating liquor at the premises of any club registered in pursuance of the Licensing Act, 1902, he is liable on summary conviction to a fine not exceeding, for the first offence, 20*s*., and for any subsequent offence 40*s*. (*p*); and

(b) If any person selling, supplying, or distributing intoxicating liquor, or authorising such sale, supply, or distribution on the premises of a club registered under the Licensing Act, 1902, within three years after the date of the conviction, knowingly sells, supplies or distributes, or allows any person to sell, supply or distribute, intoxicating liquor to, or for the consumption of, any such convicted person, he is liable on summary conviction to a fine not exceeding, for the first offence, 10*l*., and for any subsequent offence in respect of the same person 20*l*. (*q*).

It is to be noted that the supply to such a convicted person is an offence, whether the liquor is for the consumption of the convicted person or not. It is equally an offence to supply liquor to some other person for the consumption of the convicted person.

Police regulations.

Regulations must be made by the police authority for the purpose of securing the giving of information to secretaries of clubs registered under the Licensing Act, 1902, of orders (*r*) making a person one who may not be legally supplied with intoxicating liquor, and

(*n*) See L. A. 1902, § 6 (1).
(*o*) L. A. 1902, § 6 (2).
(*p*) L. A. 1902, § 6 (2) (a).
(*q*) L. A. 1902, § 6 (2) (b).
(*r*) Under L. A. 1902, § 6.

for assisting in the identification of such convicted persons (*s*).

Sending Child to Obtain Liquor.—Every person who knowingly sends any person under the age of fourteen years to any place where intoxicating liquors are sold or delivered, or distributed, for the purpose of obtaining any description of intoxicating liquor, excepting such as are sold or delivered in corked and sealed vessels in quantities not less than one reputed pint for consumption off the premises only, for consumption by any person on or off the premises, is liable to a penalty not exceeding 40*s.* for the first offence, and not exceeding 5*l.* for any subsequent offence (*t*).

A place where intoxicating liquors are distributed includes a club registered under the Licensing Act, 1902.

Sale of Liquor on Club Premises.

Registered club not licensed premises.

But the registration of a club under the Licensing Act, 1902, does not constitute the club premises licensed premises, or authorise any sale of intoxicating liquor therein which would otherwise be illegal (*u*).

Meaning of "sale."

By the Sale of Goods Act, 1893, a contract of sale of goods is defined as "a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price." And it is provided that "there may be a contract of sale between one part owner and another" (*x*).

By the Licensing Act, 1872, it is enacted that in proving the sale of intoxicating liquor for the purpose of any proceeding relative to an offence under that Act, it is not necessary to show that any money actually

(*s*) L. A. 1902, § 6 (3).
(*t*) 1 Edw. 7, c. 27, § 2.
(*u*) L. A. 1902, § 24 (2).
(*x*) 56 & 57 Vict. c. 71, § 1 (1).

passed, if the court is satisfied that a transaction in the nature of a sale actually took place (*y*).

A "transaction in the nature of a sale" seems to mean a case of barter, or of other equivalent than money being given in exchange for the liquor (*z*).

It has, however, been held in several cases (*a*) that a mere distribution amongst members of a club of liquor, the legal or beneficial ownership of which is in the members themselves, is not a sale within the meaning of the Licensing Acts. None of these cases have been before the Court of Appeal, but they would now probably be upheld in any court.

The manager of a *bonâ fide* club, to which members paid an entrance fee and subscription, the whole of the club property being vested in trustees, conducted the general business on behalf of a committee of management. Intoxicating liquors were supplied at fixed prices to members for consumption on and off the premises 33 per cent. above original cost price, the money going to the general funds of the club. The manager supplied intoxicating liquors to a member, who paid for them. It was held that this was not a sale within the meaning of sect. 3 of the Licensing Act, 1872 (*b*). This decision was given by a Divisional Court, consisting of Field, J., and Huddleston, B. The former in his judgment says:—"I think the true construction of the rules [of the club] is that the members were the joint owners of the general property in all the goods of the club, and that the trustees were their agents with respect to the general property in the goods (*c*).

(*y*) L. A. 1872, § 62; see main work, pp. 186 *et seq.*

(*z*) See 9 Geo. 4, c. 61, § 18 (now repealed), for which L. A. 1872, § 3, taken together with the above definition, is a substitute.

(*a*) All following the case of *Graff* v. *Evans* (1882), 8 Q. B. D. 373; 51 L. J. M. C. 25; 46 L. T. 347; 46 J. P. 262; 30 W. R. 380.

(*b*) *Graff* v. *Evans* (1882), 8 Q. B. D. 373; 51 L. J. M. C. 25; 46 L. T. 347; 46 J. P. 262; 30 W. R. 380.

(*c*) 8 Q. B. D. at p. 378.

I think [the member supplied] was an owner of the property together with all the other members of the club. Any member was entitled to obtain the goods on payment of the price. A sale involves the elements of a bargain. There is no bargain here, nor any contract with [the manager] with respect to the goods. [The member] was acting upon his rights as a member of the club, and became entitled to have ale and whisky supplied to him as a member at a certain price." "There was no contract between two persons, because [the member] was vendor as well as buyer." "I think it was a transfer of a special property in the goods to [the member], which is not a sale within the meaning of the section."

A club was a limited company, the shareholders constituting the members. The company depended entirely for current expenses on cash taken for supplies of liquor and food to shareholders. There was no annual subscription. Any person joining paid one shilling and had to be approved by the directors. The manager supplied intoxicating liquors to a member. It was held that this was not a sale, or at least was not a sale by the manager (*d*).

B. was introduced to the respondent, who was an ordinary member of a club, and who wrote B.'s name in the visitors' book. B. placed one shilling on the counter and called for two pints of ale. Respondent took the one shilling from B., and paid it to the girl serving behind the counter. The liquor was consumed by B. and a friend. Respondent received the change and handed it back to B. The rules of the club stated that on no account was money for intoxicating liquor to be paid by visitors directly to the manager

(*d*) *Newell* v. *Hemingway* (1888), 58 L. J. M. C. 46; 60 L. T. 544; 53 J. P. 324; 16 Cox, C. C. 604; commented on by Channell, J., in *National Sporting Club, Ld.* v. *Cope* (1900), 82 L. T. at p. 355.

of the club. It was held that the *respondent* had sold liquor to B. (*e*).

E. was summoned for selling intoxicating liquors without a license, in a house over the door of which was a signboard with the words "The Cathay's Working Men's Club." The interior was fitted like a public-house, and E. professed to be the manager. There was a committee and there was a secretary, who, however, exercised no control over E. The justices found that the arrangements representing the establishment as a club were a pretence, and that, in fact, the manager was the proprietor of the establishment. E. supplied the supposed members of the club with intoxicating liquors. It was held that this was a sale by E. (*f*).

The members of a proprietary club upon election and the payment of a certain subscription, became entitled to use the club-house and to enter into contracts for the purchase of wine and spirits with the proprietors, out of their stock. The stock belonged to the proprietary company, and the company was under no obligation to furnish the members of the club with any special wine or particular spirits. A person elected as an honorary member of the club pending inquiries, but not afterwards elected, was supplied with liquor. It was held that there had been a sale by the proprietors (*g*).

The members of a club were formed into a limited company for the purpose of carrying on the club. Owing to the death of some members and the resignation of others, a few shares became the property of persons who were not members. Intoxicating liquors, the property of the company, were supplied to members of the club. It was held that, the company being a separate legal entity from the members, and not in fact

(*e*) *Stevens* v. *Wood* (1890), 54 J. P. 742.

(*f*) *Evans* v. *Hemingway* (1887), 52 J. P. 134.

(*g*) *Bowyer* v. *Percy Supper Club, Ld.*, [1893] 2 Q. B. 154; 5 R. 472; 69 L. T. 447; 57 J. P. 470; 42 W. R. 29; 17 Cox, C. C. 669.

consisting of the same persons as the members, this was a sale of intoxicating liquors by the company (*h*).

A club, originally carried on as a members' club, was placed in the hands of the manager, who was to receive the profits as remuneration for his services if he conformed to requirements of members and paid all expenses. The manager afterwards carried on the club at his own risk and supplied liquor to members "at the club tariff." It was held that he sold the liquor without a license, and that there was no evidence upon which the magistrate might come to any other conclusion (*i*). In this case it was said that "the legal test" as to whether a supplying of liquor amounts to a sale "depends upon the question whether the property in the exciseable articles in the establishment was in the members of the so-called club, or in the defendant." And it is submitted that this is an accurate statement of the law, and that when the phrases "members' club" and "proprietary club" are used in relation to the question of sale or no sale, by "members' club" is meant a club the members of which own the intoxicating liquors supplied, and by "proprietary club" is meant a club the proprietor of which owns the intoxicating liquors, whether the proprietor be an individual or a company.

Supply to agent of member.

A member of a working men's club—whether a proprietary or a members' club did not appear—sent his wife on a Sunday to the club to fetch some beer for him. The wife was furnished with money by the husband and obtained the beer. The court refused to quash a conviction of the steward of the club for selling beer without a license (*k*).

If intoxicating liquor is sold by a *bonâ fide* members'

(*h*) *National Sporting Club* v. *Cope* (1900), 82 L. T. 352; 16 T. L. R. 158; 64 J. P. 310; 48 W. R. 446.

(*i*) *Lynam* v. *O'Reilly* (1898), 2 Ir. R. 48.

(*k*) *Woodley* v. *Simmonds* (1896), 12 T. L. R. 196; 60 J. P. 150; 40 Sol. J. 260.

club to an agent of a member for the purpose of such member consuming the liquor off the club premises, this is not a sale within the meaning of sect. 3 of the Licensing Act, 1872 (*l*).

But it is now provided that intoxicating liquor shall not be supplied in a club for consumption off the premises except to a member on the premises (*m*).

This provision would make what was done in the preceding case illegal, though what was there done would still be no infraction of sect. 3 of the Licensing Act, 1872 (*n*).

(*l*) *Davies* v. *Burnett*, [1902] 1 K. B. 666; 71 L. J. K. B. 355; 86 L. T. 565; 18 T. L. R. 354; 66 J. P. 406; 50 W. R. 391.

(*m*) L. A. 1902, § 27.

(*n*) See p. 19, *ante*.

CHAPTER II. (*a*).

LICENSES.

EXCISE LICENSES.

2. *Dealer's Foreign Wine License* (*b*).—No restriction is placed upon the quantity of foreign wine which may be sold under this license, and the holder may sell in wholesale or in retail quantities (*c*).

A justices' license is not required to enable the holder of this license to sell by wholesale (*d*).

When justices' license not needed.

A justices' license is not required to enable a wine merchant holding a wine dealer's license to sell by retail for consumption off the premises (*e*) if the premises in respect of which the license is taken out are exclusively used for the sale of intoxicating liquors, or of intoxicating liquors and mineral waters or other non-intoxicating drinks, and have no internal communication with the premises of any person carrying on any other trade or business (*f*).

When justices' license needed.

A justices' license is required to enable the holder of a wine dealer's license to sell by retail for consumption on the premises (*g*); or to sell by retail for consumption off the premises if the premises are not exclusively used for the sale of intoxicating liquors or of intoxicating and mineral waters or other non-intoxicating drinks, or if the premises have an internal communication with the

(*a*) See Chap. I. of main work.
(*b*) See main work, p. 5.
(*c*) *Ibid.*
(*d*) L. A. 1872, § 72 (9).
(*e*) L. A. 1872, § 73 (1).
(*f*) L. A. 1902, § 10 (1).
(*g*) L. A. 1872, § 3; L. A. 1872, § 73 (1).

premises of any person who is carrying on any other trade or business (*h*).

When justices' license needed.

5. *Spirit Dealer's Additional Off Spirit License* (*i*).—No change has been made in regard to this license, and a justices' license is still necessary if the dealer's premises are not occupied and used exclusively for the sale of intoxicating liquors, or if they have a communication with the premises of, or are in any way occupied by, a person who is carrying on any other trade or business (*k*).

It was obviously intended by amendments introduced into the Licensing Act, 1902, § 10 (1), to make a justices' license unnecessary if besides intoxicating liquors mineral waters or other non-intoxicating drinks were sold but no other trade or business was carried on, but the purpose of the amendments has failed. As originally drawn the clause of the Bill did not deal with mineral waters or other non-intoxicating drinks, and therefore it was unnecessary to touch sect. 68 of the Licensing Act, 1872, the only change being to put wine dealers in the same position as spirit dealers with regard to a justices' license. When, however, the amendments with regard to mineral waters and other non-intoxicating drinks were made part of the clause, it seems to have escaped attention that sect. 68 as well as sect. 73 (2) of the Licensing Act, 1872, dealt with spirit dealers' additional licenses, and, as sect. 68 remains unaffected, no alteration has been brought about with regard to these licenses.

6. *Spirit Dealer's Additional Off Retail Liqueur License* (*l*).—No change has been made in regard to this license, although a change was obviously in-

(*h*) L. A. 1902, § 10 (1).
(*i*) See main work, p. 7.
(*k*) L. A. 1872, § 68.
(*l*) See main work, p. 7.

tended by the Licensing Act, 1902, § 10 (1), as in the case of the spirit dealer's additional retail off spirit license (*m*).

11 and 12. *Beer Retail License* (1) *On*, (2) *Off* (*n*).—If the applicant is the keeper of a restaurant or eating-house, he may obtain either of these licenses, although he is not the real resident holder or occupier of the premises for which he applies to be licensed and such premises are not a dwelling-house (*o*).

Beer retail licenses—(1) on, (2) off.

Resident occupier.

Dwelling-house.

A refreshment-house keeper, who supplies travellers and others coming to his house with bread and cheese and other victuals when they call for them, although his chief trade is that of a beer seller, keeps open such house as an eating-house (*p*).

Eating-house.

13 and 14. *Cider Retail Licenses* (1) *On*, (2) *Off* (*q*).—If the applicant is the keeper of a restaurant or eating-house he may obtain either of these licenses, although he is not the real resident holder and occupier of the premises for which he applies to be licensed and such premises are not a dwelling-house (*r*).

As to the meaning of "eating-house," see p. 29, *ante*.

Temporary Excise Authority to Sell (*s*).—If justices have granted a temporary authority to sell any intoxicating liquor until the next special licensing sessions (*t*), the officer of Excise empowered to transfer licenses may, by indorsement on the Excise license, give the like authority to the person so authorised by the justices (*u*). And if the application at the next special sessions is adjourned by the justices (*x*), and not granted or refused,

(*m*) See *ante*, p. 28.
(*n*) See main work, p. 9.
(*o*) L. A. 1902, § 22.
(*p*) *Munn* v. *Southall* (1862), 7 L. T. 356; 26 J. P. 775; and see main work, p. 13.
(*q*) See main work, p. 10.
(*r*) L. A. 1902, § 22.
(*s*) See main work, pp. 16, 339.
(*t*) Under 5 & 6 Vict. c. 44, § 1.
(*u*) 5 & 6 Vict. c. 44, § 1.
(*x*) Under 33 & 34 Vict. c. 29, § 4 (4), and L. A. 1902, § 16 (4). See p. 38, *post*.

the said officer of Inland Revenue may, by indorsement on the Excise license, give authority to continue to sell until the hearing of the adjourned application (*y*).

JUSTICES' LICENSES.

Beer retail licenses.

2 and 3. *Beer or Cider Retail On and Off Licenses* (*z*). —Any of these licenses may be granted to an applicant who is the keeper of a restaurant or eating-house, although he is not the real resident holder and occupier of the premises for which he applies to be licensed and such premises are not a dwelling-house (*a*).

As to the meaning of "eating-house," see *ante*, p. 29.

8. *Foreign Wine Retail Off License* (*b*).—The holder of a wine dealer's license requires this justices' license in order to enable him to sell by retail for consumption off the premises, only if the premises in respect of which he holds the wine dealer's license are not used exclusively for the sale of intoxicating liquors, or of intoxicating liquors and mineral waters or other non-intoxicating drinks, or have an internal communication with the premises of some person who is carrying on some other trade or business (*c*).

10. *Spirit Dealer's Additional Retail License* (*d*), and

11. *Spirit Dealer's Additional Retail Liqueur License* (*e*).—No change has been made with regard to these licenses, although a change was obviously intended (*f*).

(*y*) L. A. 1902, § 16 (4).
(*z*) See main work, p. 20.
(*a*) L. A. 1902, § 22.
(*b*) See main work, p. 22.
(*c*) L. A. 1872, § 73 (1); L. A. 1902, § 10 (1).
(*d*) See main work, p. 23.
(*e*) See main work, p. 24.
(*f*) See p. 28, *ante*.

CHAPTER III. (*a*).

METHOD OF APPLICATION FOR AND GRANT OF JUSTICES' LICENSES (*b*).

Time of holding general annual licensing meeting.

General Annual Licensing Meeting (*b*).—The general annual licensing meeting, in every licensing district, must be held within the first fourteen days of February (*c*).

In 1902 A. D.

The general annual licensing meeting, which would but for the Licensing Act, 1902, be held between 20th August and 14th September, 1902, shall not be held (*d*).

City of London.

The time of granting licenses in the City of London is not affected by the Licensing Act, 1902 (*e*).

Appointment of Adjourned Meetings (*f*).—Every adjournment of the general annual licensing meeting must be held within one month of the date of the general annual licensing meeting (*g*).

Duration of justices' license.

Every license granted by justices at a general annual licensing meeting, or any adjournment thereof, shall be in force from April 5th following the day of grant for one whole year and no longer (*h*).

In 1902 A. D.

In every licensing district where the general annual licensing meeting would but for the Licensing Act, 1902, be held between 20th August and 14th Sep-

(*a*) See Chap. II. of main work.
(*b*) See main work, p. 25.
(*c*) L. A. 1902, § 14 (1).
(*d*) L. A. 1902, § 14 (2).
(*e*) 9 Geo. 4, c. 61, § 36; L. A. 1902, § 34 (1); 59 & 60 Vict. c. 14, § 2 and sched 2.
(*f*) See main work, p. 28.
(*g*) L. A. 1902, § 14 (1); L. A. 1902, § 33 and sched., which repeal the last part of 9 Geo. 4, c. 61, § 3.
(*h*) 9 Geo. 4, c. 61, § 13; L. A. 1902, § 33 and sched.; 33 & 34 Vict. c. 29, § 4 (5); L. A. 1872, § 74, "License"; see main work, p. 29.

tember, 1902, all justices' licenses and billiard licenses which are in force on the 10th day of October, 1902, shall, upon production of such licenses to the clerk of the licensing justices, and upon payment to him of half of the fees which would have been payable if that license had been renewed in 1902, remain in force until 5th April, 1903, unless previously forfeited, or unless the person to whom or the premises in respect of which the license was granted is or become disqualified (*i*).

Upon payment of the said fees the clerk to the licensing justices must indorse a note of the payment on the licenses (*k*).

Justices may postpone consideration under certain circumstances.

If any applicant for the grant or renewal of any justices' license (*l*) has, through inadvertence or misadventure, failed to comply with any preliminary requirement of the Wine and Beerhouse Acts, 1869 and 1870, or any Act incorporated therewith, the justices may, if they think fit, and upon such terms as they think proper, postpone the consideration of the application to an adjourned meeting (whether held within one month of the date of the annual meeting or not) (*m*); and if at such adjourned meeting the justices are satisfied that such terms have been complied with, they may proceed to grant or withhold such license as if such preliminary requirements had been complied with (*n*).

The exact effect of sect. 11 of the Wine and Beerhouse Act Amendment Act, 1870 (*o*), as altered by sect. 14 (6) of the Licensing Act, 1902, is very difficult to determine. In the first place, only some of the preliminary notices are now required by the Wine and Beerhouse Acts of 1869 and 1870 (*p*). Other notices are required by the Licensing Act, 1872 (*q*), which is not

(*i*) L. A. 1902, § 14 (3).
(*k*) *Ibid.*
(*l*) L. A. 1902, § 14 (6).
(*m*) *Ibid.*
(*n*) 33 & 34 Vict. c. 29, § 11; L. A. 1902, § 14 (6); and see main work, p. 30.
(*o*) 33 & 34 Vict. c. 29.
(*p*) See main work, pp. 68, 73.
(*q*) § 40.

incorporated with the Acts of 1869 and 1870 (*r*), and the Licensing Act, 1902 (*s*); and yet the power to adjourn an application seems to be confined to cases in which only the preliminary requirements of the Acts of 1869 and 1870, or Acts incorporated therewith, have not been complied with.

In the second place, power seems to be given by sect. 14 (6) of the Licensing Act, 1902, to postpone the hearing to an adjourned meeting held more than one month after the date of the general annual licensing meeting; but there is no power to appoint an "adjourned meeting" to be held after that date (*t*), and there seems to be some confusion between a common law adjournment of an annual licensing meeting and an "adjourned meeting"—spoken of in sect. 11 of the Wine and Beerhouse Act Amendment Act, 1870—which is a statutory meeting.

If, however, it is now possible to adjourn, under sect. 14 (6) of the Licensing Act, 1902, to a date more than a month after the general annual licensing meeting, the date fixed will no doubt be before April 5th, as any license granted at it would not come into operation until the 5th April subsequent to the day of grant (*u*), and justices would hardly grant a license which did not come into force until a date subsequent to the next general annual licensing meeting.

(*r*) *R.* v. *Groom*, [1901] 2 K. B. 157; 70 L. J. K. B. 636; 84 L. T. 534; 17 T. L. R. 433; 65 J. P. 452; 49 W. R. 484.

(*s*) § 18.

(*t*) See 9 Geo. 4, c. 61, § 3; L. A. 1902, § 14 (1); *R.* v. *Groom*, [1901] 2 K. B. 157; 70 L. J. K. B. 636; 84 L. T. 534; 17 T. L. R. 433; 65 J. P. 452; 49 W. R. 484; and see main work, pp. 28, 78.

(*u*) See p. 31, *ante*.

RENEWAL (*x*).

Renewal.—Any application for the grant of a license to which sect. 10 of the Licensing Act, 1902, applies, in respect of any premises on which the applicant was on 1st January, 1903 (*y*), authorised to sell beer, wine, spirits, liqueurs, sweets, or cider by retail to be consumed off the premises, shall be deemed to be an application for the renewal of a license, and shall be subject to the provisions of the Licensing Acts relating to the renewal of licenses (*z*).

It seems clear that sect. 10 of the Licensing Act, 1902, applies to all licenses for the sale of intoxicating liquor to be consumed off the premises (*a*).

In order that this enactment may apply, the applicant must be the same person who had authority to sell on 1st January, 1903, and must apply in respect of the same premises. It is submitted that the application must also be for a license to sell the same liquors as he was on that date authorised to sell (*b*).

It is submitted further that all that the enactment does is to put on to the footing of applications for a renewal applications for justices' licenses which, in consequence of this section, will have to be sought for the first time in 1903, the applicants formerly having sold under the authority of excise licenses only; and that an application for a justices' license will not be upon the same basis as an application for a renewal after 1903, unless a license in respect of the premises existed during the year before the application for such renewal (*c*).

Alterations and Additions (*d*).—Any alteration in any

(*x*) See main work, p. 33.
(*y*) L. A. 1902, § 34 (3).
(*z*) L. A. 1902, § 10 (3).
(*a*) See L. A. 1902, § 10 (1) and (2).
(*b*) See L. A. 1874, § 32, "New License."
(*c*) See Blackburn, J., in *Ex parte Tarbath* (1874), 31 L. T. 513; 39 J. P. 101; and main work, p. 35.
(*d*) See main work, p. 36.

premises licensed by justices (*e*) for the sale by retail of intoxicating liquors to be consumed *thereon*, which gives increased facilities for drinking, or conceals from observation any part of the premises used for drinking, or which affects the communication between the part of the premises where liquor is sold and any other part of the premises or any street or other public way, must not be made without the consent of the licensing justices either at the general annual licensing meeting or at a special licensing sessions (*f*).

Plans.

The licensing justices may, before giving their consent to such alteration, require plans of the proposed alterations to be deposited with their clerk at such time as they may determine (*g*).

Forfeiture of license.

If any such alteration is made, save under the order of some lawful authority, without such consent as aforesaid, a court of summary jurisdiction may, on complaint, by order declare the license forfeited, or may direct that within a time fixed by the order the premises shall be restored to their original condition (*h*).

Order to restore premises.

Notice to owner.

Notice of such order must be given forthwith by the clerk of the court to the owner of the premises in respect of which the order is made (*i*).

Application by owner.

Where an order is made declaring the license forfeited, an application may be made by or on behalf of the owner of the premises to a court of summary jurisdiction for authority to carry on the same business on the same premises until the next special sessions for licensing purposes, and a further application may be made to such next special sessions for the grant of a license in respect of such premises (*k*).

Appeal to quarter sessions.

The order made by the court of summary jurisdiction

(*e*) L. A. 1872, § 74, "Licensed premises."

(*f*) L. A. 1902, § 11 (2).

(*g*) *Ibid.*

(*h*) L. A. 1902, § 11 (2).

(*i*) L. A. 1902, § 11 (5).

(*k*) L. A. 1902, § 11 (3); L. A. 1874, § 15; and see main work, pp. 54—56.

forfeiting the license, or directing the restoration of the premises, is subject to appeal to quarter sessions by a person aggrieved (*l*).

If the owner applies to special sessions for a license, and the special sessions refuse to grant the license, the owner can appeal to quarter sessions (*m*).

Justices may require plan and order alterations.

On any application for the renewal of a license for the sale of any intoxicating liquor to be consumed on the premises, the licensing justices may require a plan of the premises to be produced before them, and to be deposited with their clerk; and on renewing any such license they may by order direct that, within a time fixed by the order, such alterations as they think reasonably necessary to secure the proper conduct of the business shall be made in that part of the premises where intoxicating liquor is sold or consumed (*n*). If any such order for alteration is made and complied with, no further requisition for the structural alteration of the premises can be made within the next five years (*o*) after the date of such order.

Order for alterations.

TRANSFERS AND GRANTS AT SPECIAL SESSIONS.

In 1902—3 A.D.

Transfers and Grants of Licenses at Special Sessions (*p*).—The justices of the peace acting in and for each licensing district where the general annual licensing meeting would but for the Licensing Act, 1902, have been held between 20th August and 14th September, 1902, must on some day within the month of October, 1902, hold a special meeting, and at that meeting

(*l*) L. A. 1872, § 52; L. A. 1902, § 34 (1).
(*m*) L. A. 1902, § 11 (3); L. A. 1874, § 15; *R.* or *Newton* v. *West Riding JJ.* (1883), 11 Q. B. D. 417; 52 L. J. M. C. 99; 48 J. P. 149; and see main work, p. 108.
(*n*) L. A. 1902, § 11 (4).
(*o*) *Ibid.*
(*p*) See main work, p. 41.

appoint not less than two nor more than four special sessions to be held between the date of that meeting and the 1st February, 1903, at periods as near as may be equally distant; and at such special sessions the justices shall have the same powers and jurisdiction as if the said days had been appointed at a general annual licensing meeting in accordance with sect. 4 of 9 Geo. 4, c. 61, and the Licensing Acts, 1828 to 1886 (*q*), shall have effect accordingly, and any license granted at any such special sessions will be in force until 5th April, 1903, and no longer (*r*).

Attendance of Transferor and Transferee, and Production of Agreements.—In the case of any application under sect. 4 or sect. 14 of the Alehouse Act, 1828 (*s*), the person holding the license and the person who it is proposed shall become the holder, must attend the special sessions at which the application is heard; and any agreement or other assurance under which the license is to be transferred or held, must be produced to the licensing justices (*t*).

But the licensing justices may, for good cause shown, dispense with the attendance of either or both of such persons (*u*).

For the purpose of compelling the attendance of any such person, or any witness, the licensing justices have all the powers of a court of summary jurisdiction (*x*).

Repeated Applications (*y*).—For the purpose of preventing repeated applications at special sessions the licensing justices may, at the general annual licensing meeting, make regulations determining the time which must elapse after the hearing of one application at

(*q*) See 59 & 60 Vict. c. 14, § 2, and sched. 2.
(*r*) L. A. 1902, § 14 (5).
(*s*) 9 Geo. 4, c. 61.
(*t*) L. A. 1902, § 16 (1).
(*u*) *Ibid.*
(*x*) *Ibid.*
(*y*) See main work, p. 45.

special sessions before a second can be made in respect of the same premises (*z*).

But the justices may, for good cause shown, dispense with the observance of these regulations in any particular case (*a*).

Transfer of license granted conditionally.

A license was originally granted, and on various subsequent occasions renewed, upon a condition embodied in the license that the license should be given up upon the licensee leaving or ceasing to carry on his grocery business upon the premises. The licensee being about to give up his business and leave the premises, an application was made for the transfer of the license to another person. The transfer was granted by quarter sessions on appeal. It was held that the aforesaid condition did not take away jurisdiction to grant the transfer (*b*).

Justices may adjourn application at special sessions.

It is in the discretion of the justices to whom any application is made under sect. 4 or sect. 14 of the Alehouse Act, 1828, to adjourn the consideration of the application (*c*); and where any such application is adjourned, and there is in force a temporary authority to sell intoxicating liquor on the licensed premises (*d*), such authority continues in force till the hearing of the adjourned application, and the proper officer of Inland Revenue may give the like authority by indorsement on the excise license (*e*).

Duration of grant at special sessions.

A license granted at special sessions continues in force only from the day on which it is granted until the 5th April then next ensuing (*f*).

Temporary Authority from Justices at Petty Sessions (*g*). —A temporary authority to sell until the next special

(*z*) L. A. 1902, § 16 (2).
(*a*) *Ibid.*
(*b*) *Oldham JJ.* v. *Gee* (1902), 86 L. T. 389; 18 T. L. R. 348; 66 J. P. 341; 50 W. R. 394; see main work, p. 50.
(*c*) 33 & 34 Vict. c. 29, § 4 (4); L. A. 1902, § 16 (4).
(*d*) Under 5 & 6 Vict. c. 44.
(*e*) L. A. 1902, § 16 (4).
(*f*) 9 Geo. 4, c. 61, § 14; L. A. 1902, § 33, and sched.; see main work, p. 50.
(*g*) See main work, p. 51.

sessions cannot be granted by a petty sessional court unless the applicant has, one week at least before the holding of the court, served on the superintendent of police for the district the like notice as is required in the case of an application for the transfer of a license (*h*).

This notice is a notice of his intention to apply for a temporary authority. It must be signed by the applicant or by his authorised agent, and must set forth the name of the person to whom the temporary authority is to be granted, together with his place of residence, and his trade or calling, during the six months preceding the time of serving such notice (*i*). But in any case of urgency the week's notice to the police may be dispensed with if, in the opinion of the court, such notice to the police has been given as is reasonable under the circumstances of the particular case (*k*).

In case of urgency.

If the justices adjourn the application at the next special sessions without deciding it (*l*), the temporary authority to sell continues in force till the hearing of the adjourned application (*m*).

Temporary authority continues until hearing of application at special sessions.

Continuance of Sale by Heirs (*n*).—The heir, executor, administrator, or assign, or trustee in bankruptcy carrying on business under this provision (*o*) is, for the period limited, a licensed person (*p*).

Executor is a licensed person.

Owner may sometimes obtain Temporary Authority and Grant at Special Sessions (*q*).—If an order by a court of summary jurisdiction (*r*), forfeiting a license on the

(*h*) L. A. 1902, § 15.
(*i*) L. A. 1872, § 40 (2); see main work, p. 73.
(*k*) L. A. 1902, § 15.
(*l*) Under 33 & 34 Vict. c. 29, § 4 (4), and L. A. 1902, § 16 (4).
(*m*) L. A. 1902, § 16 (4).
(*n*) See main work, p. 53.
(*o*) Proviso to L. A. 1872, § 3.
(*p*) *Macdonald* v. *Hughes*, [1902] 1 K. B. 94; 71 L. J. K. B. 43; 85 L. T. 727; 18 T. L. R. 79; 66 J. P. 86; 50 W. R. 318.
(*q*) See main work, pp. 54—56.
(*r*) Under L. A. 1902, § 11 (2); see p. 35, *ante*.

ground that alterations in the licensed premises have been made without the consent of the licensing justices, or directing the restoration of the premises to their original condition, an application may be made on behalf of the owner of the premises to a court of summary jurisdiction to carry on the same business on the same premises until the next special licensing sessions, and a further application to such next special sessions for the grant of a license in respect of such premises (*s*).

Procedure of Licensing Justices (*t*).—On any application for the grant, renewal, or transfer of a license, the licensing justices must have regard to any entries in the register of licenses relating either to the person by whom, or to the premises in respect of which, the license is to be held (*u*).

Evidence on oath.

All evidence upon an application by a license-holder for the renewal of his license must be taken on oath (*x*), even if one of the justices themselves starts the objection (*y*). The question whether justices must act only upon the sworn evidence and not upon their own local knowledge has been raised, and the Divisional Court decided it, but the case was taken to the Court of Appeal, and in that court no opinion on this question was given (*z*). But facts may be admitted (*a*). The proceedings upon an application for renewal will not be invalidated if the justices have become acquainted with the general circumstances of the case, and use that

(*s*) L. A. 1902, § 11 (3); L. A. 1874, § 15.

(*t*) See main work, p. 63.

(*u*) L. A. 1902, § 9 (2).

(*x*) L. A. 1872, § 42 (3); *R.* v. *Eales* (1880), 42 L. T. 735; 44 J. P. 553; per Lord Esher, M. R., in *R.* v. *Newcastle* (1887), 3 T. L. R. 351; 51 J. P. 244; and see main work, p. 63.

(*y*) *Gascoyne* v. *Risley* (1888), 36 W. R. 605.

(*z*) *R.* v. *Howard* or *Farnham JJ.*, [1902] 2 K. B. 363; 71 L. J. K. B. 754; 18 T. L. R. 690.

(*a*) See *R.* v. *Kent JJ.* (1877), 41 J. P. 263.

information to bring to the minds of persons before them the points they have to deal with (*b*).

Off licenses require confirmation.

Confirmation of New Licenses (*c*).—New licenses and orders sanctioning the removal of a license (*d*) when granted by justices, whether for consumption on or off the premises, are not valid until they are confirmed (*e*).

Procedure of Confirming Authority (*f*).—An application for the confirmation of the grant of a license shall not be heard until twenty-one days at least have expired since the date of the grant of the license (*g*).

Notices of Application for Justices' Licenses.

New license

In Case of a New License (*h*).—In addition to other prescribed notices a person intending to apply for a new license must, twenty-one days at least before the date of the general annual licensing meeting, serve on the clerk of the licensing justices notice of his intention, setting forth his name and address and a description of the license or licenses for which he intends to apply, and of the situation of the premises in respect of which the application is to be made (*i*).

Clerical error.

An application was made to licensing justices for an "off" beer and cider license. All the requisite notices were given and properly described the character of the license to be applied for, except the notice served on the superintendent of police, in which by a clerical error the license desired was described as a license for consumption "on" the premises. It was held that the justices had jurisdiction to hear and

(*b*) *R.* v. *Howard* or *Farnham JJ.*, [1902] 2 K. B. 363; 71 L. J. K. B. 754; 18 T. L. R. 690.
(*c*) See main work, p. 64.
(*d*) L. A. 1872, § 50.
(*e*) L. A. 1872, §§ 37, 38; L. A. 1902, § 19 (2).
(*f*) See main work, p. 67.
(*g*) L. A. 1902, § 19 (1).
(*h*) See main work, p. 68.
(*i*) L. A. 1902, § 18.

grant the application, it appearing that the superintendent of police was not misled by the mistake (*k*).

Plan to be deposited.

Plans.—A person intending to apply for a new license for the sale by retail of any intoxicating liquor to be consumed ON the premises must, not less than twenty-one days before the annual licensing meeting, deposit with the clerk to the licensing justices a plan of the premises in respect of which the application is to be made (*l*).

Notice of application at special sessions.

In Case of a Transfer or Grant at Special Sessions (*m*). —In the case of every application under sect. 4 or sect. 14 of the Alehouse Act, 1828 (*n*)—whether the applicant be the holder of the license or be the person desirous of holding the license—the applicant must, fourteen days prior to one of the special transfer sessions, serve a notice of his intention to transfer the license upon—

(i) One of the overseers of the parish, township, or place in which the premises in respect of which his application is to be made are situate; and

(ii) On the superintendent of police of the district.

This notice must be signed by the applicant or by his authorised agent, and must set forth the name of the person to whom it is intended the license shall be transferred, together with the place of his residence, and his trade or calling during the six months preceding the time of serving such notice (*o*).

It is submitted that sect. 16, sub-s. 3, of the Licensing Act, 1902, impliedly repeals the proviso at the end of sect. 14 of 9 Geo. 4, c. 61 (*p*).

(*k*) *Ex parte Clayton* (1899), 63 J. P. 788.
(*l*) L. A. 1902, § 11 (1).
(*m*) See main work, p. 73.
(*n*) 9 Geo. 4, c. 61.
(*o*) L. A. 1872, § 40 (2); L. A. 1902, § 16 (3).
(*p*) But see *R.* v. *Nicholson* or *Bolton JJ.*, [1899] 2 Q. B. 455, 68 L. J. Q. B. 1034; 81 L. T. 257; 15 T. L. R. 509; 48 W. R. 52; and main work, p 74.

Notice of Opposition to an Application for a License.

In Case of a Renewal.—The licensing justices may, notwithstanding no notice has been given, *on an objection being made*, adjourn the granting of any license to a future day, and require (in case of some special cause personal to the applicant (*q*)) the attendance of the holder of the license on such day, when the case will be heard and the objection considered as if the prescribed notice had been given (*r*).

Chief constable's report.

At a general annual licensing meeting a report of the head constable was read, which contained the passage, "I respectfully ask that the renewal of [a certain beerhouse] may be withheld until the adjourned meeting." It was held that this was an objection within the meaning of the section (*s*).

Objection in open court.

An objection to comply with this section must be taken in open court (*t*).

Licensing justice raising objection.

Any one of the licensing justices may make an objection himself, on which the justices may adjourn the hearing of the application (*u*). And the fact that a justice has taken the objection will not disqualify him from sitting to hear the case when it comes up for decision (*x*).

Disqualification of Justices (*y*).

Charge of drunk in charge of child.

A justice disqualified from acting under the Licensing Acts by sect. 60 of the Licensing Act, 1872, may act in

(*q*) L. A. 1874, § 26.
(*r*) L. A. 1872, § 42 (2); see main work, p. 78.
(*s*) *Hawkins* v. *Bridgwater JJ.*, [1900] 2 Q. B. 382; 69 L. J. Q. B. 663; 82 L. T. 847; 64 J. P. 631; 48 W. R. 587.
(*t*) *R.* v. *Kingston JJ.* (1902), 82 L. T. 589; 18 T. L. R. 477; and see main work, p. 79.
(*u*) *R.* v. *Howard* or *Farnham JJ.*, [1902] 2 K. B. 363; 71 L. J. K. B. 754; 18 T. L. R. 690.
(*x*) *Ibid.*
(*y*) See main work, p. 81.

the case of a charge of being drunk in a highway or other public place while having the charge of a child apparently under the age of seven years (*z*).

Justice interested in railway.

A justice is not disqualified to act for any purpose under the Licensing Acts, 1828 to 1886 (*a*), or the Licensing Act, 1902, by reason only of his being interested in a railway company which is a retailer of intoxicating liquor (*b*).

Real bias.

A municipal corporation, having purchased certain licensed premises for the purpose of a street improvement, entered into an agreement with a brewery company by which the company was to pay the corporation a sum of money in the event of a license being granted to the company in respect of certain premises belonging to the company in another part of the town, and the corporation were to close the licensed premises bought for street improvement, and to allow the license in respect of them to lapse. Certain justices for the borough who were also members of the town council took an active part in advocating the above agreement, and afterwards sat upon the licensing committee which granted the application made by the brewery company and contemplated by the agreement. They also sat as members of the confirming authority, and confirmed the license. It was held that there was a real likelihood of bias on the part of the said justices, and the confirmation of the license was quashed (*c*).

Three members of a municipal corporation sat upon a licensing committee which granted an order for the provisional grant of removal of a license, and afterwards sat upon the confirming authority which confirmed such provisional grant. The applicants were brewers, and

(*z*) L. A. 1902, § 2 (1) and (3); L. A. 1872, § 60.

(*a*) See 59 & 60 Vict. c. 14, § 2, and sched. 2.

(*b*) L. A. 1902, § 12.

(*c*) *R.* v. *Sunderland JJ.*, [1901] 2 K. B. 357; 70 L. J. K. B. 946; 85 L. T. 183; 17 T. L. R. 484; 65 J. P. 599; overruling *R.* v. *Stockport JJ.* (1896), 60 J. P. 552; see main work, p. 84.

had expressed the intention of giving, for the purpose of a street in the town, the site of the licensed premises from which the license was to be removed, and also of setting back the building line of the new premises seven feet. Before the confirming authority objection to the said three justices was taken on the ground of the offer of the site of the old premises, and the offer was thereupon withdrawn. It was held that there was not sufficient evidence to show a probability of bias (*d*).

Disqualification of Justices' Clerks.

No solicitor or other person being a clerk of licensing justices may, by himself, his partner, or clerk, as solicitor or agent for any person, conduct or act in any application for or in respect of a license, or any other proceedings whatever under the Licensing Acts, at any licensing or petty sessions for the district for which he is clerk, except so far as relates to the preparation of notices or forms, and if any person contravenes this provision he is liable on summary conviction to a fine not exceeding 100*l.* (*e*).

Disqualified Persons.

Sect. 30 of the Licensing Act, 1872, and sect. 13 and part of sect. 14 of the Licensing Act, 1874, are now repealed (*f*), and there are no longer disqualifications after a certain number of convictions. After 1st January, 1903 (*g*), no conviction is to be recorded on a license (*h*).

(*d*) *R.* v. *Tempest* (1902), 18 T. L. R. 433.

(*e*) L. A. 1902, § 13.

(*f*) L. A. 1902, § 33, and sched.; see main work, pp. 86, 87, where paragraph 7 is now to be omitted.

(*g*) L. A. 1902, § 34 (3).

(*h*) L. A. 1902, § 9 (4).

Disqualified Premises.

Sect. 30 and a part of sect. 31 of the Licensing Act, 1872, and sect. 13 and part of sect. 14 of the Licensing Act, 1874, are now repealed (*i*), and there are no longer disqualifications after a certain number of convictions.

Notice to owner of conviction relating to premises.

When a conviction relating to any premises is entered in the register of licenses, the clerk of the licensing justices must serve, in manner provided by the Licensing Act, 1872, notice of the conviction on the owner of the premises (*k*).

The notice must be served either personally or by registered letter (*l*), and may be sent to the owner's address supplied to the clerk of the licensing justices in pursuance of sect. 70 of the Licensing Act, 1872, or if no address is so supplied notice may be sent to any address which the clerk in the exercise of his discretion believes to be the address of the person to whom the notice is sent (*m*).

Qualification of (A) Persons, and (B) Premises.

(A) *Qualified Persons.*

Real Resident Occupier (*n*).—In order to obtain a license to sell beer or cider by retail, whether to be consumed on the premises or off the premises, the applicant need not be the real holder and occupier of the premises in respect of which he applies to be licensed nor need such premises be a dwelling-house, if the applicant is the keeper of a restaurant or eating-house (*o*).

As to the meaning of "eating-house," see p. 29, *ante*.

(*i*) L. A. 1902, § 33, and sched.; see main work, pp. 88, 89, where paragraph (1) and paragraph (3) (a) are now to be omitted.

(*k*) L. A. 1902, § 9 (3); see main work, p. 89.

(*l*) L. A. 1872, § 70 *ad fin.*; L. A. 1902, § 34 (1).

(*m*) L. A. 1872, § 70. But this section is misprinted in the Queen's Printers' copy, the word "officer" evidently being a misprint for "owner," and the word "notice" in the phrase "and where no notice is supplied," obviously being a misprint for "address."

(*n*) See main work, p. 91.

(*o*) L. A. 1902, § 22.

(B) *Qualified Premises.*

Annual Value.

License to retail beer or wine for consumption on premises.

I.—(a) In the case of premises which were on 10th August, 1872, licensed to sell beer or wine for consumption on the premises under the Acts recited in the Wine and Beerhouse Act, 1869 (*p*), a justices' license cannot be granted, and if granted will be null and void, unless the premises are of the annual value set out in 3 & 4 Vict. c. 61, § 1, or in 23 Vict. c. 27, § 8, in the respective cases of beer and wine (*q*). But these provisions do not apply to premises so licensed on 10th August, 1872, if there has been a break in the continuity of the license since 10th August, 1872, even if such break was only for two days, and even if subsequently to such break the license has been continuously granted and acted upon (*r*).

Premises not licensed on Aug. 10, 1872.

II. Premises in respect of which there was a license upon August 10th, 1872, but in the continuity of which license there has been a break, even a break for a couple of days, must comply with the same requirements as to annual value (*s*) as licensed premises in respect of which no license existed on 10th August, 1872 (*t*). And this applies to alehouses (or fully licensed houses) just as much as to houses licensed for the sale of beer or wine.

(*p*) See main work, p. 92.
(*q*) See main work, pp. 92—94.
(*r*) *Igoe* v. *Shann*, [1902] 2 K. B. 467; 71 L. J. K. B. 81; 18 T. L. R. 721.
(*s*) Viz., those set out in L. A. 1872, § 45; see main work, p. 95.
(*t*) *Igoe* v. *Shann*, [1902] 2 K. B. 467; 71 L. J. K. B. 81; 18 T. L. R. 721.

CHAPTER IV. (*a*).

DISCRETION OF JUSTICES TO GRANT OR REFUSE LICENSES.

Absolute Discretion.—In addition to the licenses as to which licensing justices had an absolute discretion of refusal before the passing of the Licensing Act, 1902 (*b*), licensing justices have now an absolute discretion, except in one instance, to refuse the grant of a license (whether a new license, renewal or transfer or grant at special sessions) or order sanctioning the removal of a license (*c*), to sell by retail to be consumed off the premises, wine, spirits, liqueurs, sweets, or cider (*d*).

The one instance in which the discretion of the licensing justices is not absolute to grant or refuse a license to sell by retail to be consumed off the premises, wine, spirits, liqueurs, sweets, or cider, is when the application is for a renewal of his license by an applicant who held on the 25th June, 1902, a license then in force, and such license has been renewed to him from time to time (*e*).

Beerhouse continuously licensed since May 1, 1869.

1. *Limited Discretion* (*f*).—The discretion of the licensing justices is now limited to four grounds (*g*) in the case of an application for a license to sell by retail beer, cider, or wine to be consumed ON the premises, if such premises were so licensed on May 1st, 1869, and the license has been continuously renewed from time to

(*a*) See Chap. III. of main work.
(*b*) See main work, p. 98.
(*c*) L. A. 1872, § 50.
(*d*) L. A. 1902, § 10 (2).
(*e*) L. A. 1902, § 10 (2) and (4).
(*f*) See main work, p. 100.
(*g*) *Ibid.*

time, whether held by the same person or not, or has been transferred to any other person or persons (*h*).

Applicant continuously holding off license since June 25, 1902.

2. In the case of an application for a renewal of his license to sell by retail to be consumed off the premises wines, spirits, liqueurs, sweets, or cider, by an applicant who had his license in force on 25th June, 1902, and whose license has been renewed to him from time to time, the discretion of the justices to refuse such renewal is limited to the four grounds (*i*) on which such an application could have been refused before the passing of the Licensing Act, 1902, or to the additional ground that the licensee has sold surreptitiously under such license, or has assisted in concealing or misrepresenting the nature of goods sold under such license, or has in any other way, in the opinion of the licensing justices, been guilty of misconduct in the management of his business under such license (*k*).

(*h*) 32 & 33 Vict. c. 27, § 19, as amended by 33 & 34 Vict. c. 29, § 7; see main work, p. 101.

(*i*) See main work, p. 100.

(*k*) L. A. 1902, § 10 (4).

CHAPTER V. (*a*).

METHODS OF QUESTIONING THE DECISION OF THE LICENSING JUSTICES.

I. Appeal to Quarter Sessions.

Appeal Against Order for Alterations.—If upon the renewal of a license for the sale by retail of any intoxicating liquor to be consumed upon the premises, the licensing justices make an order for alteration of the premises (*b*), such order is subject to an appeal to quarter sessions in accordance with the provisions of the Alehouse Act, 1828 (*c*).

Appeal by Owner Against Forfeiture of License for Unauthorised Alterations.—In the case of an order of forfeiture of a license on account of unauthorised alterations, or an order for the restoration of licensed premises to their original condition (*d*), the owner is expressly authorised to make (an application to a court for summary jurisdiction for a temporary authority to carry on the same business on the same premises until the next special licensing sessions, and a further) application for a license to such next special sessions, and if he so applies, and his application is refused, he may appeal to quarter sessions (*e*).

(*a*) See Chap. IV. of main work.

(*b*) Under L. A. 1902, § 11 (4); see p. 36, *ante*.

(*c*) L. A. 1902, § 11 (4); see main work, pp. 106—112.

(*d*) Made under L. A. 1902, § 11 (2); see p. 35, *ante*.

(*e*) L. A. 1902, § 11 (3); L. A. 1874, § 15; *R.* or *Newton* v. *West Riding JJ.* (1883), 11 Q. B. D. 417; 52 L. J. M. C. 99; 48 J. P. 149; see main work, p. 108.

Costs (*f*).—Justices who appear upon the hearing of an appeal from a refusal to renew or transfer a license are, if such appeal is dismissed, entitled to indemnity costs under sect. 29 of 9 Geo. 4, c. 61, and the court has no discretion in the matter, even if the only application made to them be an application for costs, which does not specify that the justices demand their costs as a matter of right and not of discretion and demand indemnity costs and not merely party and party costs (*g*).

It is now further enacted that in every case of appeal against the decision of any licensing justice (*h*), the court to which such appeal is made must adjudge and order that the treasurer of the county or place, in and for which such justice whose decision is appealed against acted on the occasion when he gave such decision, pay to such justice such sum as in the opinion of the court is sufficient to indemnify such justice from all costs and charges whatsoever to which such justice has been put, and which cannot be recovered from any other person (*i*), and the said treasurer is hereby authorised to pay the same, which must be allowed to him in his accounts (*k*).

Order at ensuing sessions.

Taxation out of sessions.

The order of the appellate court may be made either at the sessions when the appeal is heard or at the next ensuing sessions, and the costs may be taxed either in or out of sessions (*l*).

An order for the costs of justices to be paid by the treasurer of the county or place must be in the form of an order to pay to the justices or else to pay to some person appointed by them. The costs must be taxed by the court, or the taxation of the clerk of the peace must

(*f*) See main work, p. 117.

(*g*) *R.* v. *Worcestershire JJ.*, [1900] 2 Q. B. 576; 69 L. J. Q. B. 826; 83 L. T. 272; 64 J. P. 707; 49 W. R. 89.

(*h*) For meaning of "licensing justices," see main work, p. 147.

(*i*) See main work, p. 117.

(*k*) L. A. 1902, § 20.

(*l*) L. A. 1902, § 17.

be adopted by the court, and it seems also that notice to attend the taxation should be given to the treasurer of the county or place upon whom the order to pay is made (*m*).

Meaning of "county or place."

County or Place (*n*).—It has been decided that the words "county or place" do not include a borough having a separate commission of the peace but no separate quarter sessions, and that in the case of such a borough the order for payment should be made upon the treasurer of the county (*o*). But the attention of the judges who decided this case does not appear to have been directed either to sect. 38 of the Licensing Act, 1872, which did away with concurrent jurisdiction of justices for licensing purposes, or to the *subsequent* enactment of sect. 246 of the Municipal Corporation Act, 1882 (*p*), which runs in the following words: "LICENSING.—In the Act of 9 Geo. 4, c. 61, 'to regulate the granting of licenses to keepers of inns, ale houses, and victualling houses in England,' the expressions 'town corporate,' 'county or place,' and 'division or place,' include every borough having a separate commission of the peace." It is therefore submitted that the above decision was given *per incuriam*, and would not be followed (*q*).

III. CERTIORARI (*r*).

Confirmation.

The decision of the Divisional Court that the confirmation of a license may be set aside by *certiorari*, because the confirming authority has power to award

(*m*) *R.* v. *Winder*, [1900] 2 Q. B. 666; 69 L. J. Q. B. 729; 83 L. T. 171; 16 T. L. R. 400; 64 J. P. 741; 48 W. R. 605.
(*n*) See main work, p. 118.
(*o*) *R.* v. *Warwick JJ.*, [1902] 2 K. B. 101; 71 L. J. K. B. 505; 86 L. T. 568; 18 T. L. R. 492.
(*p*) 45 & 46 Vict. c. 50, § 246.
(*q*) See main work, p. 118.
(*r*) See main work, p. 129.

costs to the "party" succeeding before it (*s*), has been approved by the Court of Appeal (*t*).

Real bias.

Certain justices took part as members of the licensing committee (in a borough having more than ten justices) in the provisional grant of a license, and subsequently in the confirmation of such provisional grant. They were members of the corporation of the borough, and previously to the said provisional grant and confirmation had taken part in bringing about an agreement between the corporation and a brewery company who were the applicants for the said provisional grant and confirmation. This agreement recited the intention of the company to apply for a license in respect of certain new premises, and provided that if the application were granted the company would pay 10,000*l.* to the corporation, and that the corporation would upon the opening of such new premises close a certain fully licensed hotel, which had been purchased by the corporation with a view to street improvements, and would not apply for any renewal of the license in respect of such hotel. It was further agreed that, if the license to the company were set aside by proceedings in the High Court, the sum of 10,000*l.* should be repaid to the company by the corporation. The order confirming the license was quashed by *certiorari* on the ground of bias (*u*).

But justices are not precluded from hearing an application for a renewal on the ground that they are acting both as prosecutor and judge simply because they have served notice of objection to the renewal, after themselves taking formal objection to it, and adjourning

(*s*) *R.* v. *Manchester JJ.*, [1899] 1 Q. B. 571; 68 L. J. Q. B. 358; 16 T. L. R. 201; 80 L. T. 531; 63 J. P. 360; 47 W. R. 410; see main work, p. 130.

(*t*) *R.* v. *Sunderland JJ.*, [1901] 2 K. B. 357; 70 L. J. K. B. 946; 85 L. T. 183; 17 T. L. R. 484; 65 J. P. 599; and see *R.* v. *Gee* (1901), 17 T. L. R. 374.

(*u*) *R.* v. *Sunderland JJ.*, [1901] 2 K. B. 357; 70 L. J. K. B. 946; 85 L. T. 183; 17 T. L. R. 484; 65 J. P. 599; overruling *R.* v. *Stockport JJ.* (1896), 60 J. P. 357; see main work, p. 133; but see *R.* v. *Tempest* (1902), 18 T. L. R. 433; and p. 45, *ante*.

the case for the purpose of putting in train for enquiry (*x*).

Person aggrieved.

Though a writ of *certiorari* is only granted *ex debito justitiæ* to a person aggrieved, and a mere member of the public having no special grievance is not a person aggrieved (*y*), a brewer, owning licensed houses in the neighbourhood, who has opposed the grant of the license he seeks to quash, both before the licensing justices and before the confirming authority, and has there taken the point upon which it is sought to quash the license, is a person aggrieved for the purpose of applying for a *certiorari* (*z*).

(*x*) *R.* v. *Howard* or *Farnham JJ.*, [1902] 2 K. B. 363; 71 L. J. K. B. 754; 18 T. L. R. 690.

(*y*) See main work, p. 136.

(*z*) *R.* v. *Groom*, [1901] 2 K. B. 157; 70 L. J. K. B. 636; 84 L. T. 534; 17 T. L. R. 433; 65 J. P. 599; 49 W. R. 484.

CHAPTER VI. (*a*).

HOURS OF CLOSING.

Occasional Exemption from Closing Hours (*b*).—Nothing in sect. 17 of the Licensing Act, 1902, affects the provisions of sect. 29 of the Licensing Act, 1872, which empower the local authority to extend the hours of closing on special occasions (*c*).

Liability to receive traveller.

Right of Licensee to Close Premises (*d*).—A fully licensed house is not necessarily an inn, and the licensee of a fully licensed house not being an inn is not bound to receive travellers (*e*), and even an innkeeper is not bound to receive any but travellers (*f*).

If all the bedrooms of an inn are full, the innkeeper is under no obligation to provide a traveller with shelter and accommodation for the night, although the coffee-room be unoccupied and the traveller demands to be allowed to pass the night there (*g*).

(*a*) See Chap. V. of main work.
(*b*) See main work, p. 151.
(*c*) L. A. 1902, § 17 (3).
(*d*) See main work, p. 152.
(*e*) *Sealey* v. *Tandy*, [1902] 1 K. B. 296; 71 L. J. K. B. 41; 85 L. T. 459; 18 T. L. R. 38; 66 J. P. 19; 50 W. R. 347.
(*f*) *Ibid.*
(*g*) *Browne* v. *Brandt*, [1902] 1 K. B. 696; 71 L. J. K. B. 367; 86 L. T. 825; 18 T. L. R. 399.

CHAPTER VII. (*a*).

REGISTERS OF LICENSES.

Convictions, &c. to be entered on register.

Justices' Licenses.—There shall be entered on the register of licenses all forfeitures of licenses, disqualification of premises, records of convictions, and other matters relating to the licenses on the register (*b*).

Where a licensed person is convicted before any court of any offence committed by him as such, the clerk of the licensing justices must enter notice of every such conviction in the form prescribed by the Secretary of State (*c*) in the register of licenses kept by him, and if the clerk of the court is not the clerk of the licensing justices, he must forthwith send notice of the conviction to the clerk of the licensing justices (*d*).

When a conviction relating to any premises is entered in the register of licenses, the clerk of the licensing justices must serve, in manner provided by the Licensing Act, 1872, notice of the conviction upon the owner of the premises (*e*).

The notice must be served either personally or by registered letter (*f*), and may be sent to the owner's address supplied to the clerk of the licensing justices, in pursuance of sect. 70 of the Licensing Act, 1872, or if no address is so supplied notice may be sent to any address which the clerk in the exercise of his discretion believes to be the address of the person to whom the notice is sent (*g*).

(*a*) See Chap. VII. of main work.

(*b*) L. A. 1872, § 36; see main work, pp. 158, 159.

(*c*) This form is not yet prescribed.

(*d*) L. A. 1902, § 9 (1).

(*e*) L. A. 1902, § 9 (3).

(*f*) L. A. 1872, § 70 *ad fin.*

(*g*) L. A. 1902, § 34 (1); 59 & 60 Vict. c. 14, § 2 and sched. 2; L. A. 1872, § 70. But this section is misprinted in the Queen's Printers' copy, the word "officer" evidently being an error for "owner," and the word "notice" in the phrase "and where no notice is supplied," being an error for "address."

CHAPTER VIII. (*a*).

FORMS OF LICENSES.

Justices' Licenses (*b*).—When the renewal of a license is made by the issue of a copy of the old license, it is no longer necessary to endorse on such copy the convictions endorsed on the old license (*c*). And after January 1st, 1903 (*d*), no conviction is to be recorded on a license (*e*).

(*a*) See Chap. VIII. of main work.
(*b*) See main work, p. 161.
(*c*) L. A. 1902, § 33, and sched., which repeal a part of L. A. 1872, § 48.
(*d*) L. A. 1902, § 34 (3).
(*e*) L. A. 1902, § 9 (4).

CHAPTER IX. (*a*).

OCCASIONAL LICENSES.

An occasional license can only be granted with the consent of a petty sessional court (*b*), and twenty-four hours at least before applying for that consent the applicant must serve on the superintendent of police for the district notice of his intention to apply for the consent, setting out his name and address, the place and occasion in respect of which the license is required, the period for which the license is to be in force, and the hours to be specified in the consent of the justices (*c*).

Provided that where there is no sitting of a petty sessional court within three days before the time when the license is required, and it is shown to the satisfaction of the justices hereinafter mentioned that it was not practicable to make an application to a petty sessional court, the consent may be given by any two justices acting for the division and sitting together, and notice of such consent must be sent to the superintendent of police (*d*)—apparently by the applicant.

(*a*) See Chap. IX. of main work.

(*b*) L. A. 1902, § 17 (1); see main work, p. 163.

(*c*) L. A. 1902, § 17 (1); 25 & 26 Vict. c. 22, § 13; 26 & 27 Vict. c. 33, § 20; 27 & 28 Vict. c. 18, § 5; L. A. 1874, § 19; L. A. 1902, § 17 (2).

(*d*) L. A. 1902, § 17 (1).

CHAPTER X. (a).

CANTEENS, MUSIC AND DANCING LICENSES AND BILLIARD LICENSES.

Canteens (b).—Sect. 174 of the Army Act (c) is now repealed (d), and it is enacted that notwithstanding any enactment to the contrary, it is not necessary for a person holding a canteen under the authority of a Secretary of State or of the Admiralty to obtain a justices' license or certificate to enable him to obtain or hold any excise license for the sale of any intoxicating liquor, and an excise license may be granted to any such person (e).

Music and Dancing Licenses (f).—In places outside the administrative county of London (g), in which the Act 25 Geo. 2, c. 36, is in force, a license under that Act for music or dancing or both may be granted to the commissioners or other body for the time being acting in execution of the Baths and Washhouses Acts, 1846 to 1899, at any annual licensing meeting of the council authorised to grant such a license, or at any other meeting of such council duly convened with fourteen days previous notice (h). Baths and washhouses where 25 Geo. 2, c. 36, in force.

A swimming bath may be used for music and dancing provided that the commissioners first obtain such license as is required for the use of a place for that purpose under any enactment in force in the area for which such commissioners act, or, if no such enactment is in force, a license from the county council (i). Elsewhere.

No portion of the premises so licensed must be let otherwise than occasionally, and no money for admission must be taken at the doors (k). Only occasional letting. No money at doors.

(a) See Chap. X. of main work.
(b) See main work, p. 165.
(c) 44 & 45 Vict. c. 58.
(d) L. A. 1902, § 33, and sched.
(e) L. A. 1902, § 23.
(f) See main work, pp. 169—171.
(g) 62 & 63 Vict. c. 29, § 4.
(h) 62 & 63 Vict. c. 29, § 3.
(i) 62 & 63 Vict. c. 29, § 2 (a).
(k) 62 & 63 Vict. c. 29, § 2 (b).

In 1902.

Billiard Licenses (*l*).—In every licensing district where the general annual licensing meeting would but for the Licensing Act, 1902, have been held in August or September, 1902, all billiard licenses granted by justices which are in force on 10th October, 1902, will, upon production of such license to the clerk to the licensing justices, and upon payment to him of half of the fees which would have been payable if that license had been renewed in 1902, be and remain in force until 5th April, 1903, unless previously forfeited (*m*).

Duration of license.

Every billiard license continues in force from April 5th in Middlesex and Surrey (*but elsewhere from October 10th*) after the granting thereof for a whole year (*n*), and although billiard licenses will be granted at the general annual licensing meeting, which will for the future be held in February each year, the repeal of the words "in the counties of Middlesex and Surrey," and "and elsewhere from the 10th day of October," in sect. 10 of 8 & 9 Vict. c. 109, which is wanted to bring the grant of billiard licenses under that Act into conformity with the Licensing Act, 1902, has been overlooked, and until the error is put right there will be no power to grant billiard licenses to be in force between 5th April, 1903, and 10th October, 1903 (*o*).

(*l*) See main work, p. 183.

(*m*) L. A. 1902, § 14 (3).

(*n*) 8 & 9 Vict. c. 109, § 10.

(*o*) 8 & 9 Vict. c. 109, § 10; L. A. 1902, § 14 (3).

CHAPTER XI. (*a*).

OFFENCES.

Clubs.

Selling without Justices' License (*b*).—The members of a club were formed into a joint stock company under the Companies Acts for the purpose of carrying on the club. Owing to the death of some members and the resignation of others, a few shares became the property of persons who were not members. Intoxicating liquors, the property of the company, were supplied to members of the club. It was held that, the company being a separate legal entity from the members, and not in fact consisting of the same persons as the members, this was a sale of intoxicating liquors by the company (*c*).

If intoxicating liquor is supplied by a *bonâ fide* members' club to an agent of a member for the purpose of such member consuming the liquor off the club premises, this is not a sale within the meaning of sect. 3 of the Licensing Act, 1872 (*d*).

Consumption off premises.

But it is now provided that intoxicating liquor shall not be supplied in a club for consumption off the premises except to a member on the premises; and if any person supplies or obtains any intoxicating liquor in contravention of this section he is liable, on summary conviction, to a fine not exceeding 10*l.* (*e*).

(*a*) See Chap. XI. of main work.

(*b*) See main work, p. 189.

(*c*) *National Sporting Club, Ld.* v. *Cope* (1900), 82 L. T. 352; 16 T. L. R. 158; 64 J. P. 310; 48 W. R. 446.

(*d*) *Davies* v. *Burnett*, [1902] 1 K. B. 666; 71 L. J. K. B. 355; 86 L. T. 565; 18 T. L. R. 354; 66 J. P. 406; 50 W. R. 391.

(*e*) L. A. 1902, § 27.

Place of Sale (*f*).—A traveller for the holder of a beer retail license for consumption off the premises called at the house of a customer and obtained an order for six bottles of beer. He entered the order in a memorandum book which he had with him, and the beer was delivered by the carter of the license holder four days later. On delivering the bottles, which were not marked in any way indicating any appropriation, the carter took the bottles from a box which was constructed to contain twelve bottles, but which only contained six. There was no address or label on the boxes, and the beer was paid for on delivery. It was held that the place of sale was the customer's house and not the licensed premises (*g*).

Who liable for sale.

A servant of the House of Commons sold intoxicating liquor, the property of the House of Commons, at a bar within the precincts of the House. The purchaser was not a member of either House of Parliament, and the place where the sale took place was not licensed for the sale of any intoxicating liquor. It was held, nevertheless, that the servant could not be convicted (*h*).

Sale without excise license.

A proprietor of a restaurant, in respect of which there was no license to sell any intoxicating liquor, was in partnership with a person who had a license at another place. He was convicted of selling wine at the restaurant without an excise license. The waiter at the restaurant had brought a bottle of wine for a person dining at the restaurant from the licensed premises of the partnership. The court held that there was sufficient evidence to justify the magistrate in convicting and finding that the sale took place at the restaurant and not at the licensed premises (*i*).

(*f*) See main work, pp. 189, 190.

(*g*) *Cocker* v. *McMullen* (1900), 81 L. T. 784; 64 J. P. 245.

(*h*) *Williamson* v. *Norris*, [1899] 1 Q. B. 7; 68 L. J. Q. B. 31; 79 L. T. 415; 15 T. L. R. 18; 62 J. P. 790; 47 W. R. 94; 19 C. C. C. 203.

(*i*) *Pasquier* v. *Neale*, [1902] 2 K. B. 287; 18 T. L. R. 704; and see *Cocker* v. *McMullen* (1900), 81 L. T. 784; 64 J. P. 245.

Record of conviction on license.

Seller liable for Drinking on Premises contrary to License (*k*).—The recording of convictions upon a license has been done away with altogether by the repeal of sect. 13 of the Licensing Act, 1874 (*l*). The provisions of the Licensing Act, 1902, § 9, have been substituted (*m*) for sects. 33, 34, 55, and 57 of the Licensing Act, 1872, and sect. 13 of the Licensing Act, 1874, and it is provided that for the future no conviction shall be recorded on a license (*n*).

Person under 14.

Sale of Intoxicating Liquor to Children (*o*).—Every holder of a license who knowingly sells or delivers, or allows any person to sell or deliver, save at the residence or working place of the purchaser, any description of intoxicating liquor to any person under the age of fourteen years for consumption on or off the premises, excepting such intoxicating liquors as are sold or delivered in corked and sealed vessels in quantities not less than one reputed pint for consumption off the premises only, is liable to a penalty not exceeding 40*s.* for the first offence, and not exceeding 5*l.* for any subsequent offence (*p*).

Sending child under 14 to obtain liquor.

Every person who knowingly sends any person under the age of fourteen years to any place where intoxicating liquors are sold or delivered or distributed for the purposes of obtaining any description of intoxicating liquor, except liquor sold or delivered in corked and sealed vessels in quantities not less than one reputed pint for consumption off the premises only, for consumption on or off the premises, is liable to a penalty not exceeding 40*s.* for the first offence, and not exceeding 5*l.* for any subsequent offence (*q*).

(*k*) See main work, p. 200.
(*l*) L. A. 1902, § 31, and sched.
(*m*) See pp. 40, 56, *ante*.
(*n*) L. A. 1902, § 9 (4).
(*o*) See main work, p. 204.
(*p*) 1 Edw. 7, c. 27, § 2. This enactment is substituted for 49 & 50 Vict. c. 56, now repealed by 1 Edw. 7, c. 27, § 1.
(*q*) 1 Edw. 7, c. 27, § 2.

"Corked" means closed with a plug or stopper, whether made of cork or wood or glass, or some other material (*r*).

"Sealed" means secured with any substance without the destruction of which the cork, plug or stopper cannot be withdrawn (*s*).

Messengers of licensees.

Nothing in the Intoxicating Liquors (Sale to Children) Act, 1901 (*t*), prevents the employment by a licensed person of a member of his family or his servant or apprentice as a messenger to deliver intoxicating liquor (*u*).

For the purpose of legal proceedings under the Intoxicating Liquors (Sale to Children) Act, 1901, that Act is construed as one with the Licensing Acts, 1872—1874 (*x*).

Power to apprehend.

Persons Found Drunk (*y*).—If a person found drunk in any highway or other public place, whether a building or not, or any licensed premises, appears to be incapable of taking care of himself, he may be apprehended and dealt with according to law (*z*).

Public place.

The expression "public place" includes any place to which the public have access, whether on payment or otherwise (*a*).

Penalty.

A person convicted of being found drunk in a highway or other public place, whether a building or not, or on licensed premises (*b*), may be ordered, in addition to or in substitution for any other penalty, to enter into a recognizance, with or without sureties, to be of good behaviour (*c*).

Drunk and Disorderly (*d*).—When a person is convicted of being guilty while drunk of riotous or dis-

(*r*) 1 Edw. 7, c. 27, § 5.
(*s*) *Ibid.*
(*t*) 1 Edw. 7, c. 27.
(*u*) 1 Edw. 7, c. 27, § 3.
(*x*) 1 Edw. 7, c. 27, § 4.
(*y*) See main work, p. 208.
(*z*) L. A. 1902, § 1.
(*a*) L. A. 1902, § 8.
(*b*) Under L. A. 1872, § 12; see main work, p. 208.
(*c*) L. A. 1902, § 3; 61 & 62 Vict. c. 60, sched. 1.
(*d*) See main work, p. 209.

orderly behaviour in a highway or other public place, whether a building or not, or of being drunk while in charge on a highway or other public place of any carriage, horse, cattle, or steam engine, or of being drunk when in possession of any loaded firearms (*e*), he may be ordered, in addition to or in substitution for any other penalty, to enter into a recognizance, with or without sureties, to be of good behaviour (*f*).

As to the meaning of "public place" in this section, see p. 64, *ante*.

Towns Police Clauses Act.

When a person is convicted of being drunk in any street, and guilty of any riotous or indecent behaviour (*g*), he may be ordered, in addition to or in substitution for any other penalty, to enter into a recognizance, with or without sureties, to be of good behaviour (*h*).

Metropolitan police district.

When a person is convicted of being found drunk in any street or public thoroughfare within the metropolitan police district, and being guilty while drunk of any riotous or indecent behaviour (*i*), he may be ordered to enter into a recognizance, with or without sureties, to be of good behaviour (*k*).

In charge of child under 7.

Drunk in Charge of Child.—If any person is drunk in any highway or public place, whether a building or not, or any licensed premises, while having the charge of a child apparently under the age of seven years, he may be apprehended; and if the child is under that age, is liable on summary conviction to a fine not exceeding 40*s.*, or to imprisonment, with or without hard labour, for any period not exceeding one month (*l*), and may be ordered, in addition to or in substitution for any

(*e*) Under L. A. 1872, § 12; see main work, p. 209.
(*f*) L. A. 1902, § 3; 61 & 62 Vict. c. 60, sched. 1.
(*g*) Under 10 & 11 Vict. c. 89, § 29; see main work, pp. 209, 210.
(*h*) L. A. 1902, § 3; 61 & 62 Vict. c. 60, sched. 1.
(*i*) Under 2 & 3 Vict. c. 47, § 58; see main work, p. 210.
(*k*) L. A. 1902, § 3; 61 & 62 Vict. c. 60, sched. 1.
(*l*) L. A. 1902, § 2 (1).

other penalty, to enter into a recognizance, with or without sureties, to be of good behaviour (*m*).

If the child appears to the court to be under the age of seven, the child is deemed, for the purposes of this section, to be under that age unless the contrary is proved (*n*).

As to the meaning of "public place" in this section, see p. 64, *ante*.

Permitting Drunkenness (*o*).—Where a licensed person is charged with permitting drunkenness on his premises (*p*), and it is proved that any person was drunk on his premises, it lies on the licensed person to prove that he and the persons employed by him took all reasonable steps for preventing drunkenness on the premises (*q*).

The meaning of this section is very obscure. Probably the intention was merely to throw the onus of proving that there was no permission on to the defendant once the fact of drunkenness was established, instead of compelling the prosecution to give some affirmative evidence of permission. The section, however, seems to have gone further than this, and it seems now that permission is assumed in law unless the defendant proves not only that under all the actual circumstances of the case he did not, and would not with reasonable care have known of the drunkenness upon his premises; but he must also prove, in order to escape conviction, that he took all reasonable steps for preventing drunkenness on the premises, and this would probably include the removal of screens obstructing the view of the premises from behind the bar, or the removal of seats from positions not readily overlooked.

(*m*) L. A. 1902, § 2 (3) and § 3.
(*n*) L. A. 1902, § 2 (2).
(*o*) See main work, p. 210.
(*p*) Under L. A. 1872, § 13.
(*q*) L. A. 1902, § 4.

Violent conduct.

It is to be observed that the law is not altered in regard to permitting violent, quarrelsome, or riotous conduct under the same section (*r*).

A licensed person includes, for this purpose, not only a person holding an occasional license (*s*), but an heir, executor, administrator or assign, of a licensed person dying before the expiration of his license, or the trustee of a licensed person who has been adjudged bankrupt or whose affairs have been liquidated by arrangement, while carrying on the business of the licensed premises under sect. 3 of the Licensing Act, 1872, until the next special licensing sessions held after fourteen days from such death or bankruptcy (*t*).

Procuring Drink for Drunken Person.—Any person who, being on any premises licensed for the sale of any intoxicating liquor, whether for consumption on or off the premises, procures, or attempts to procure, any intoxicating liquor for consumption by any drunken person, or who aids and abets any drunken person in obtaining or consuming any intoxicating liquor on any premises so licensed, is liable on summary conviction to a fine not exceeding 40*s*., or to imprisonment with or without hard labour, for any period not exceeding one month (*u*).

Continuing offence.

Permitting Premises to be a Brothel (*v*).—A conviction for permitting premises to be a brothel upon several separate days is good, as the offence is a continuing one (*x*).

Power to Exclude Drunkards, &c. from Licensed Premises (*y*).—The licensee of licensed premises which

(*r*) L. A. 1872, § 13.
(*s*) L. A. 1874, § 20.
(*t*) *M'Donald* v. *Hughes*, [1902] 1 K. B. 94; 71 L. J. K. B. 43; 85 L. T. 727; 18 T. L. R. 79; 66 J. P. 86; 50 W. R. 318.
(*u*) L. A. 1902, § 7.
(*v*) See main work, p. 217.
(*x*) *Burnby, Ex parte*, or *R.* v. *Burnby*, [1901] 2 K. B. 458; 70 L. J. K. B. 739; 85 L. T. 168.
(*y*) See main work, p. 231.

are not an inn may request a person who is not a traveller to leave the premises and may eject him if he refuses to go (*z*).

Refusing to quit.

If a person is convicted of refusing or failing when drunk to quit licensed premises when requested (*a*), he may be ordered, in addition to or in substitution for any other penalty, to enter into a recognizance, with or without sureties, to be of good behaviour (*b*).

Defacing Record of Conviction (*c*).—The recording of convictions *upon the license* being now done away with by the repeal of sect. 13 and part of sect. 14 of the Licensing Act, 1874, and the enactment of sect. 9, sub-s. 4, of the Licensing Act, 1902, the penalty for defacing such record imposed by sect. 31 of the Licensing Act, 1872, has also been repealed (*d*).

Keeping open after closing time.

Infringing Act as to Hours of Closing (*e*).—Upon a prosecution for *keeping open* for the sale of intoxicating liquors during closing hours, it was proved that a quarter of an hour after the closing hour the front door of the licensed premises was wide open, that upon the counter were glasses containing liquor, lights were burning, and there were five men in the bar. The justices convicted, but were taken to have found as facts that none of the five entered the premises after closing time, that the sale of the liquor was before closing time, and that no person would have been supplied had he entered after closing time. Upon these facts the court quashed the conviction (*f*). The whole point of this case seems to

(*z*) *Sealey* v. *Tandy*, [1902] 1 K. B. 296; 71 L. J. K. B. 41; 85 L. T. 459; 18 T. L. R. 38; 66 J. P. 19; 50 W. R. 347.

(*a*) Under L. A. 1872, § 18; see main work, p. 232.

(*b*) L. A. 1902, § 3; 61 & 62 Vict. c. 60, sched. 1. The same provision is made with regard to a similar conviction under 23 Vict. c. 27, § 41.

(*c*) See main work, p. 235.

(*d*) L. A. 1902, § 33, and sched.

(*e*) See main work, p. 236.

(*f*) *Lloyd* v. *Barnett* (1900), 82 L. T. 804; 64 J. P. 708.

be that although there was a keeping open, there was no keeping open for the sale of intoxicating liquor. It is submitted that had the charge been that of allowing the consumption of intoxicating liquor during closing hours the conviction would have been affirmed.

Liability of licensee for servant's act.

Liability of Licensee for Servant's Act (*g*).—The implied authority of a public-house manager to give into custody a person whom he suspects of stealing the property of his employer is not unlimited. The implication only arises where the arrest is reasonably necessary for the protection of the employer's property, or for its recovery if it is being wrongfully taken away (*h*).

Altering Premises without Consent of Justices.—If any alteration in any licensed premises for the sale by retail of intoxicating liquors to be consumed *thereon*, which gives increased facilities for drinking, or conceals from observation any part of the premises used for drinking, or which affects the communication between the part of the premises where intoxicating liquor is sold and any other part of the premises, or any street or other public way, is made, save under the order of some lawful authority, without the consent of the licensing justices (*i*), a court of summary jurisdiction may, on complaint, by order declare the license to be forfeited, or may direct that, within a time fixed by the order, the premises shall be restored to their original condition (*k*).

Notice of such an order must be forthwith given by the clerk of the court to the owner of the premises in respect of which the order is made (*l*).

(*g*) See main work, p. 244.
(*h*) *Hanson* v. *Waller*, [1901] 1 K. B. 390; 70 L. J. K. B. 231; 84 L. T. 91; 49 W. R. 445.
(*i*) See p. 35, *ante*.
(*k*) L. A. 1902, § 11 (2).
(*l*) L. A. 1902, § 11 (5); and see p. 35, *ante*.

Failing to Comply with Order for Alterations.—If a licensed person in respect of whose licensed premises an order requiring alterations has been made (*m*) makes default in complying with such order, he is liable on summary conviction to a fine not exceeding 20*s.* for every day during which the default continues (*n*).

Black list.

Sale of Liquor to Persons declared Habitual Drunkards.—Where upon the conviction of an offender the court is satisfied that an order of detention could be made under sect. 1 or sect. 2 of the Inebriates Act, 1898 (*o*), then, whether such an order of detention is made or not, the court must order that notice of the conviction, with such particulars as may be prescribed by a Secretary of State (*p*), be sent to the police authority for the police area in which the court is situate (*q*).

Habitual drunkard guilty of crime.

An order of detention could be made under sect. *one* of the Inebriates Act, 1898, where a person is convicted on indictment of an offence punishable with imprisonment or penal servitude, if the court is satisfied from the evidence that the offence was committed under the influence of drink or that drunkenness was a contributing cause of the offence, and the offender admits that he is, or is found by the jury to be, a habitual drunkard (*r*). But the indictment must allege, after charging the offence, that the offender is a habitual drunkard (*s*). The offender is only to be arraigned in the first instance upon the charge for the offence, and after pleading guilty or being found guilty, may admit that he is a habitual drunkard, or if he does not admit that he is a habitual drunkard, the jury must be charged to inquire whether he is a habitual drunkard or not (*t*). But unless evidence that the

(*m*) Under L. A. 1902, § 11 (4); see p. 69, *ante*.
(*n*) L. A. 1902, § 11 (4).
(*o*) 61 & 62 Vict. c. 60.
(*p*) These are not yet prescribed.
(*q*) L. A. 1902, § 6 (1).
(*r*) 61 & 62 Vict. c. 60, § 1 (1).
(*s*) 61 & 62 Vict. c. 60, § 1 (2).
(*t*) *Ibid.*

offender is a habitual drunkard has been given before he is committed for trial, at least seven days' notice must be given to the proper officer of the court and to the offender that it is intended to charge habitual drunkenness in the indictment (*u*).

Habitual drunkard four times convicted of drunkenness.

An order of detention could be made under sect. *two* of the Inebriates Act, 1898, in the case of any person who is convicted of any of the following offences, and who within twelve months preceding the date of the commission of the offence has been convicted summarily at least three times of any of such offences, and who is a habitual drunkard (*v*) :—

(1) Being found drunk in a highway or other public place, whether a building or not, or on licensed premises (*x*) ;
(2) Being guilty while drunk of riotous or disorderly behaviour in a highway or other public place, whether a building or not (*y*) ;
(3) Being drunk while in charge, on any highway or other public place, of any carriage, horse, cattle, or steam-engine (*z*) ;
(4) Being drunk when in possession of any loaded firearms (*a*) ;
(5) Being found drunk in a highway or other public place, whether a building or not, or on licensed premises while in charge of a child (*b*) ;
(6) Refusing or failing when drunk to quit licensed premises when requested (*c*) ;
(7) Refusing or failing when drunk to quit any premises or place licensed under the Refreshment Houses Act, 1860, when requested (*d*) ;

(*u*) 61 & 62 Vict. c. 60, § 6 (2).
(*v*) 61 & 62 Vict. c. 60, § 2.
(*x*) Under L. A. 1872, § 12.
(*y*) *Ibid.*
(*z*) *Ibid.*
(*a*) *Ibid.*
(*b*) Under L. A. 1902, § 2 (1) ; L. A. 1902, § 2 (3).
(*c*) Under L. A. 1872, § 18.
(*d*) Under 23 & 24 Vict. c. 27, § 41.

(8) Being found drunk in any street or public thoroughfare within the Metropolitan Police District, and being guilty while drunk of any riotous or indecent behaviour (*e*) ;

(9) Being drunk in any street, and being guilty of riotous or indecent behaviour therein (*f*) ;

(10) Being intoxicated while driving a hackney carriage (*g*) ;

(11) Being drunk during employment as a driver of a hackney carriage, or as a driver or conductor of a stage carriage in the Metropolitan Police District (*h*) ;

(12) Being drunk and persisting, after being refused admission on that account, in attempting to enter a passenger steamer (*i*) ;

(13) Being drunk on board a passenger steamer, and refusing to leave such steamer when requested (*k*).

(14) All similar offences in local Acts (*l*).

Meaning of police authority.

The police authority means: (1) In the Metropolitan Police District, one of His Majesty's principal Secretaries of State; (2) in a county, the standing joint committee of the quarter sessions and the county council; (3) in a borough, the watch committee; (4) in a town not being a borough and maintaining a separate police force under any local Act of Parliament, the authority having the management of the police under the local Act (*m*).

Notice to convicted person.

Where a court orders notice of a conviction to be sent to a police authority, the court must inform the convicted person that the notice is to be so sent (*n*).

(*e*) Under 2 & 3 Vict. c. 47, § 58.
(*f*) Under 10 & 11 Vict. c. 89, § 29.
(*g*) 10 & 11 Vict. c. 89, § 61.
(*h*) Under 6 & 7 Vict. c. 86, § 28.
(*i*) Under 57 & 58 Vict. c. 60, § 287.
(*k*) *Ibid.*
(*l*) 61 & 62 Vict. c. 60, § 2, and sched. 1.
(*m*) L. A. 1902, § 6 (1); 53 & 54 Vict. c. 45, § 33, and sched. 3.
(*n*) L. A. 1902, § 6 (2).

Habitual drunkard obtaining liquor.

If the convicted person within three years after the date of the conviction purchases or obtains, or attempts to purchase or obtain, any intoxicating liquor at any licensed premises, or at the premises of any club registered under the Licensing Act, 1902, he is liable on summary conviction to a fine not exceeding, for the first offence, 20*s.*, and for any subsequent offence 40*s.* (*o*).

Supplying liquor to habitual drunkard.

If the holder of any license, or any person selling, supplying, or distributing intoxicating liquor, or authorising such sale, supply or distribution on the premises of a club registered under the Licensing Act, 1902, within three years after the date of such conviction, knowingly sells, supplies or distributes, or allows any person to sell, supply or distribute, intoxicating liquor to or for the consumption of any such convicted person, he is liable on summary conviction to a fine not exceeding, for the first offence, 10*l.*, and for any subsequent offence in respect of the same person 20*l.* (*p*).

There are two offences under this sub-section :—

(1) The supply to such a convicted person, whether the liquor is for the consumption of the convicted person or not;

(2) The supply to some other person for the consumption of the convicted person.

Information to be supplied by police.

Regulations must be made by the police authority for the purpose of securing the giving of information to licensed persons and secretaries of registered clubs, orders (*q*) making a person one who may not be legally supplied with intoxicating liquor, and for assisting in the identification of such persons (*r*).

(*o*) L. A. 1902, § 6 (2) (a).

(*p*) L. A. 1902, § 6 (2) (b).

(*q*) Made under the L. A. 1902, § 6.

(*r*) L. A. 1902, § 6 (3).

CHAPTER XII. (*a*).

APPEALS FROM CONVICTIONS AND ORDERS OF COURTS OF SUMMARY JURISDICTION.

I. Appeal to Quarter Sessions.

It is enacted by the Licensing Act, 1872, that if any person feels aggrieved by any order or conviction made by a court of summary jurisdiction, the person so aggrieved may appeal therefrom to a court of quarter sessions (*b*).

The Licensing Act, 1902, is to be construed as one with the Licensing Acts, 1828 to 1886 (*c*), and therefore is to be construed as one with the Licensing Act, 1872 (*d*); and it follows that there is an appeal to quarter sessions from any order or conviction made by a court of summary jurisdiction under the Licensing Act, 1902.

It is particularly to be noticed that, besides convictions, the following orders under the Licensing Act, 1902, are subject to appeal to quarter sessions:—

(a) An order forfeiting a license or directing premises to be restored to their original condition on account of unauthorised alterations (*e*);

(b) An order striking a club off the register of clubs (*f*);

(c) An order directing that premises shall not be used for the purposes of any club requiring registration (*g*).

(*a*) See Chap. XII. of main work.

(*b*) L. A. 1872, § 52; see main work, p. 256.

(*c*) L. A. 1902, § 34 (1).

(*d*) 59 & 60 Vict. c. 14, § 2 (1), and sched. 2; see main work, p. 434.

(*e*) Under L. A. 1902, § 11 (2); and see pp. 35, 69, *ante*.

(*f*) Under L. A. 1902, § 28 (1); see p. 9, *ante*.

(*g*) Under L. A. 1902, § 28 (4); see pp. 12, 16, *ante*.

CHAPTER XIII. (*a*).

Covenants not to Endanger License (*b*).—By the lease of a public-house the lessee covenanted for himself and his assigns to "so conduct and manage the same as to afford no reasonable or lawful ground or pretence for the justices refusing to renew . . . . or objecting to renewal of the licenses." The lessee assigned the lease, and the assignee let the premises to a tenant who was convicted of opening the premises for the sale of intoxicating liquor during prohibited hours on three separate occasions. It was held that the covenant was an absolute covenant and had been broken, and that the lessee and his assignee were liable for the breach (*c*).

A covenant in a lease of licensed premises that "if at any time during the continuance of this demise the license or licenses shall be forfeited, lost, or withheld, then and in such case the lessees shall and will thereupon pay to the lessor the sum of 250*l.* as liquidated and ascertained damages and not as a penalty," covers a case in which a renewal of the license is refused by justices without any fault on the part of the lessees (*d*).

In one case, upon a breach of covenant by the tenant which endangered the license, a receiver was, upon the motion of the landlord, given possession of the premises so far as might be necessary for the preservation of the licenses (*e*).

(*a*) See Chap. XIII. of main work.

(*b*) See main work, p. 271.

(*c*) *Mumford* v. *Walker*, [1901] 71 L. J. K. B. 19; 85 L. T. 518; 18 T. L. R. 80.

(*d*) *Dalley* v. *Phillips & Marriott, Ld.* (1901), 18 T. L. R. 18.

(*e*) *Charrington* v. *Camp*, [1902] 1 Ch. 386; 71 L. J. Ch. 196; 86 L. T. 15.

CHAPTER XIV. (*a*).

COVENANTS TO TAKE BEER, ETC. FROM LANDLORD (*b*).

A COVENANT by a tenant of an hotel that he will at all times during his tenancy purchase from the landlords and their successors in business all beer, &c. sold or consumed either on or off the premises, and that he will not at any time, directly or indirectly, sell or dispose of on the premises any beer, &c., other than such as shall have been so *bonâ fide* purchased, is a covenant which runs with the land, and is enforceable by the purchasers of the reversion and of the landlords' brewery business, although the purchasers have, at the time of action brought, ceased to carry on such business at the original landlords' brewery (*c*).

The decision in the case of *Rice* v. *Noakes* (*d*) has been upheld in the House of Lords (*e*).

Tied house becoming free house, Court may refix rent.

A lease of a tavern was granted to a brewery company for a term of years at a rental of 300*l.*, with a condition of re-entry if the lessees should enter into liquidation. On the same day the company granted an underlease to a publican at a rental of 800*l.*, reducible to 300*l.* so long as he got his beer from the company. The company went into liquidation, and the original lessor brought an action to recover possession of the tavern. The underlessee counterclaimed under sect. 4

(*a*) See Chap. XIV. of main work.
(*b*) See main work, p. 277.
(*c*) *Manchester Brewery Co.* v. *Coombs*, [1901] 2 Ch. 608; 70 L. J. Ch. 814; 82 L. T. 347.
(*d*) Main work, p. 280.
(*e*) *Noakes* v. *Rice*, [1902] A. C. 24; 71 L. J. Ch. 139; 86 L. T. 62; 66 J. P. 147; 50 W. R. 305.

of the Conveyancing and Law of Property Act, 1892 (*f*), for relief against the forfeiture. The court granted the relief, but varied the rent having regard to the circumstance that the tavern ceased to be a tied house (*g*).

Current market price.

A lessee covenanted to purchase from his lessors all liquors for consumption on the premises which the lessors should be willing to supply at "the fair current market price." The lessors issued price lists, and supplied the ordinary public at the full price on the list, "free" houses at a discount of 20 per cent., and the lessee and tenants of their other "tied" houses at a discount of 10 per cent. It was held by Wright, J., that the words "fair current market price" meant a price fair and current in the case of tied houses, and not in excess of the general market rate, and that the price did not cease to be fair and current because tenants of free houses obtained the liquors at lower prices (*h*).

(*f*) 55 & 56 Vict. c. 13.

(*g*) *Ewart* v. *Fryer*, [1901] 1 Ch. 499; 70 L. J. Ch. 138; 83 L. T. 551; 49 W. R. 145.

(*h*) *Arnold Perrett & Co., Ld.* v. *Radford* (1901), 17 T. L. R. 301.

CHAPTER XV. (*a*).

INNKEEPER'S LIABILITY (*b*).

Absence of negligence of innkeeper.

An innkeeper cannot escape liability for the loss of a guest's goods simply by proving that there was no negligence on the part of the innkeeper (*c*).

(*a*) See Chap. XV. of main work.
(*b*) See main work, p. 283.
(*c*) *Butler* v. *Quilter* (1900), 17 T. L. R. 159.

CHAPTER XVI. (a).

ADULTERATION OF DRINK (b).

Record of conviction on license.

THE provision (c) that the conviction of a licensee for an offence against the provisions of any Act in force relating to the adulteration of drink may be recorded upon the license is now repealed (d), together with all provisions for recording convictions upon licenses, and no conviction is for the future to be recorded on a license (e). Such a conviction is, however, still to be entered in the proper register of licenses (f).

Penalty on sale of food not of nature, &c. demanded.

The penalty for selling to the prejudice of the purchaser an article of food not of the nature, substance or quality demanded (g) is not to exceed 20*l.* for a first offence, 50*l.* for a second offence, 100*l.* for a subsequent offence (h).

Meaning of "food."

The term "food" (i) includes every article used for food or drink by man other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food; and also flavouring matters and condiments (j).

Analyst's certificate.

If the analyst's certificate certifies merely that a sample of beer in question "contains arsenic," or "contains a serious quantity of arsenic," it is not sufficient.

(a) See Chap. XVI. of main work.
(b) See main work, p. 292.
(c) In L. A. 1874, § 14.
(d) L. A. 1902, § 31, and sched.
(e) L. A. 1902, § 9 (4).
(f) L. A. 1874, § 14; and see main work, p. 292.
(g) See main work, p. 292.
(h) 38 & 39 Vict. c. 63, § 6; 62 & 63 Vict. c. 51, § 17 (1).
(i) See main work, p. 293.
(j) 62 & 63 Vict. c. 51, § 26; 38 & 39 Vict. c. 63, § 2, is repealed by 62 & 63 Vict. c. 51, § 27, and sched.

The certificate must contain sufficient materials to enable the magistrates to form a judgment on the materials before them whether the offence charged has been committed (*k*).

Knowledge.

A person who sells beer (*l*) which in fact contains such an admixture of arsenic as to be prejudicial to health is liable to conviction, although he does not know, and cannot reasonably be expected to know, of the presence of the arsenic in the beer (*m*).

Label.

The label (*n*) referred to in sect. 8 of the Food and Drugs Act, 1875 (*o*), is not to be deemed distinctly and legibly written or printed within the meaning of that section unless it is so written or printed that the notice of mixture given by the label is not obscured by other matter on the label (*p*).

But nothing in this enactment shall hinder or affect the use of any registered trade mark, or of any label which has been continuously in use for at least seven years prior to the 1st day of January, 1900 (*q*).

Penalty for abstraction of part of article.

The penalty for abstracting part of an article of food so as to affect injuriously its quality, substance, or nature, with intent that the same may be sold in its altered state without notice (*r*), is not to exceed 20*l.* for a first offence, 50*l.* for a second offence, 100*l.* for a subsequent offence (*s*).

Purchase for analysis.

A person purchasing an article for analysis must divide it into three parts (*t*). The mere offer to do so is insufficient (*u*).

(*k*) *Lee* v. *Bent; Barlow* v. *Noblett*, [1901] 2 K. B. 290; 70 L. J. K. B. 747; 84 L. T. 719; 65 J. P. 646; 49 W. R. 684, 701.

(*l*) See main work, p. 296.

(*m*) *Goulder* v. *Rook; Bent* v. *Ormerod*, [1901] 2 K. B. 290; 70 L. J. K. B. 747; 84 L. T. 719; 65 J. P. 646: 49 W. R. 684, 701.

(*n*) See main work, p. 297.

(*o*) 38 & 39 Vict. c. 63.

(*p*) 62 & 63 Vict. c. 51, § 12.

(*q*) 62 & 63 Vict. c. 51, § 12, and § 28 (2).

(*r*) See main work, p. 297.

(*s*) 38 & 39 Vict. c. 63, § 6; 62 & 63 Vict. c. 51, § 17 (1).

(*t*) See main work, p. 299.

(*u*) 62 & 63 Vict. c. 51, § 13, which repeals the words "offer to" in 38 & 39 Vict. c. 63, § 14.

Refusal to sell to inspector or constable.

In spite of the penalty imposed by sect. 17 of the Sale of Food and Drugs Act, 1875 (*v*); where any article of food or drug is exposed for sale in an unopened tin or packet duly labelled, no person can be required to sell it except in the unopened tin or packet in which it is contained (*x*).

Analyst's certificate evidence for defendant.

At the hearing of the information in any proceeding under the Sale of Food and Drugs Acts, the production by the *defendant* (*y*) of a certificate of analysis by a public analyst in the form prescribed in sect. 18 of the Sale of Food and Drugs Act, 1875 (*z*), is sufficient evidence of the facts therein stated, unless the prosecutor requires that the analyst be called as a witness (*a*).

Copy to be sent to prosecutor.

But a copy of every such certificate must be sent to the prosecutor at least three clear days before the return day, and, if it be not so sent, the court may adjourn the hearing on such terms as seem proper (*b*).

Warranty.

A warranty or invoice is not available as a defence (*c*), unless the defendant has, within seven days after the service of the summons, sent to the purchaser a copy of such warranty or invoice, with a written notice stating that he intends to rely on the warranty or invoice, and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to such person (*d*).

The person by whom such warranty or invoice is alleged to have been given is entitled to appear at the hearing and to give evidence, and the court may adjourn the hearing to enable him to do so (*e*).

A warranty or invoice given by a person resident

(*v*) 38 & 39 Vict. c. 63; see main work, p. 300.
(*x*) 62 & 63 Vict. c. 51, § 18.
(*y*) As to analyst's certificate produced by prosecutor, see 38 & 39 Vict. c. 63, § 21, and main work, p. 301.
(*z*) 38 & 39 Vict. c. 63.
(*a*) 62 & 63 Vict. c. 51, § 22 (1).
(*b*) 62 & 63 Vict. c. 51, § 22 (2).
(*c*) See main work, p. 301.
(*d*) 62 & 63 Vict. c. 51, § 20 (1).
(*e*) 62 & 63 Vict. c. 51, § 20 (2).

outside the United Kingdom is not available as a defence, unless the defendant proves that he took reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained in the warranty or invoice (*f*).

Where defendant is a servant.

Where the defendant is a servant of the person who purchased the article under a warranty or invoice, he is entitled to rely on the warranty in the same way as his employer or master would have been entitled to do if he had been the defendant, provided that the servant further proves that he had no reason to believe the article was otherwise than that demanded by the prosecutor (*g*).

General warranty.

The warranty need not be a specific warranty given with each consignment. A general warranty in writing of all future consignments is sufficient, if it is shown by evidence that the article the subject-matter of the charge was supplied under the warranty thus previously given (*h*).

Time for proceeding.

The enactment as to the time within which a summons must be served (*i*) has been repealed (*k*), and the following provisions have been substituted.

When any article of food or drug has been purchased from any person for test purposes, any prosecution under the Sale of Food and Drugs Acts in respect of the sale thereof, notwithstanding anything in the Sale of Food and Drugs Act, 1875 (*l*), cannot be instituted after the expiration of twenty-eight days from the time of the purchase (*m*).

(*f*) 62 & 63 Vict. c. 51, § 20 (3).

(*g*) 62 & 63 Vict. c. 51, § 20 (4).

(*h*) *Elliott* v. *Pilcher*, [1901] 2 K. B. 817; 70 L. J. K. B. 795; 85 L. T. 50; 65 J. P. 743; disapproving *Harris* v. *May* (1883), 12 Q. B. D. 97; 53 L. J. M. C. 39; 48 J. P. 261; see main work, p. 301.

(*i*) 42 & 43 Vict. c. 30, § 10; main work, p. 303.

(*k*) 62 & 63 Vict. c. 51, § 27, and sched.

(*l*) 38 & 39 Vict. c. 63, § 20, which provides that proceedings are to be taken under the Summary Jurisdiction Acts; see main work, p. 303.

(*m*) 62 & 63 Vict. c. 51, § 19 (1).

In any prosecution under the Sale of Food and Drugs Acts the summons must state particulars of the offence or offences alleged, and also the name of the prosecutor, and must not be returnable in less time than fourteen days from the day on which it is served, and there must be served therewith a copy of any analyst's certificate obtained on behalf of the prosecutor (*n*). Regulation as to summons.

(*n*) 62 & 63 Vict. c. 51, § 19 (2).

APPENDIX.

INTOXICATING LIQUORS (SALE TO CHILDREN) ACT, 1901.

1 Edw. 7, cap. 27.

An Act to prevent the Sale of Intoxicating Liquors to Children.
[17th August, 1901.]

Be it enacted as follows:—

Repeal of 49 & 50 Vict. c. 56.

1. The Intoxicating Liquors (Sale to Children) Act, 1886, is hereby repealed.

Sale of liquors to children to be illegal.

2. Every holder of a license who knowingly sells or delivers, or allows any person to sell or deliver, save at the residence or working place of the purchaser, any description of intoxicating liquor to any person under the age of fourteen years for consumption by any person on or off the premises, excepting such intoxicating liquors as are sold or delivered in corked and sealed vessels in quantities not less than one reputed pint for consumption off the premises only, shall be liable to a penalty not exceeding forty shillings for the first offence, and not exceeding five pounds for any subsequent offence (*see* p. 63); and every person who knowingly sends any person under the age of fourteen years to any place where intoxicating liquors are sold, or delivered, or distributed, for the purpose of obtaining any description of intoxicating liquor, excepting as aforesaid, for consumption by any person on or off the premises, shall be liable to like penalties. (*See* pp. 21, 63.)

Messengers of licensees.

3. Nothing in this Act shall prevent the employment by a licensed person of a member of his family or his servant or apprentice as a messenger to deliver intoxicating liquors. (*See* p. 64.)

Provisions for legal proceedings under Act.

4. For the purposes of all legal proceedings under this Act, this Act shall be construed, in England, as one with the Licensing Acts, 1872—1874. (*See* p. 64.)

Definitions.

5. The term "corked" means closed with a plug or stopper, whether it is made of cork or wood, or glass, or some other material. (*See* p. 64.)

The expression "sealed" means secured with any substance without the destruction of which the cork, plug, or stopper, cannot be withdrawn. (*See* p. 64.)

Short title.

6. This Act may be cited for all purposes as "The Intoxicating Liquors (Sale to Children) Act, 1901."

Commencement of Act.

7. This Act shall come into operation on the 1st day of January, 1902.

LICENSING ACT, 1902.

2 EDW. 7, CAP. 28.

An Act to amend the Law relating to the Sale of Intoxicating Liquors and to Drunkenness, and to provide for the Registration of Clubs. [8th August, 1902.]

Be it enacted as follows:—

PART I.

Amendment of Law as to Drunkenness.

Apprehension of person found drunk and incapable in public place.

1. If a person is found drunk in any highway or other public place, whether a building or not, or on any licensed premises, and appears to be incapable of taking care of himself, he may be apprehended and dealt with according to law. (*See* p. 64.)

Penalty for being drunk while in charge of child.

2.—(1.) If any person is found drunk in any highway or other public place, whether a building or not, or on any licensed premises, while having the charge of a child apparently under the age of seven years, he may be apprehended, and shall, if the child is under that age, be liable on summary conviction to a fine not exceeding 40*s.*, or to imprisonment, with or without hard labour, for any period not exceeding one month. (*See* p. 65.)

(2.) If the child appears to the court to be under the age of seven, the child shall, for the purposes of this section, be deemed to be under that age unless the contrary is proved. (*See* p. 66.)

61 & 62 Vict. c. 60. 35 & 36 Vict. c. 94.

(3.) The offence under this section shall be included in the list of offences mentioned in the first schedule to the Inebriates Act, 1898 (*see* p. 71), and in section sixty of the Licensing Act, 1872. (*See* p. 44.)

Power to require person convicted of drunkenness to give security for good behaviour.

3. Where a person is convicted of any offence mentioned in the list of offences contained in the first schedule to the Inebriates Act, 1898, as amended by this Act (*see* pp. 71—72), the court may, either in addition to or in substitution for any other penalty, order the offender to enter into a recognizance, with or without sureties, to be of good behaviour. (*See* pp. 64, 65.)

Burden of proof in case of drunkenness on licensed premises.

4. Where a licensed person is charged with permitting drunkenness on his premises, and it is proved that any person was drunk on his premises, it shall lie on the licensed person to prove that he and the persons employed by him took all reasonable steps for preventing drunkenness on the premises. (*See* p. 66.)

Protection for wife or husband of habitual drunkard.

5.—(1.) Where the husband of a married woman is a habitual drunkard, as defined by section three of the Habitual Drunkards Act, 1879, the married woman shall be entitled to apply for an order under the Summary Jurisdiction (Married Women) Act, 1895, and that Act shall apply accordingly.

42 & 43 Vict. c. 19.

(2.) Where the wife of a married man is a habitual drunkard as defined by section three of the Habitual Drunkards Act, 1879, the married man shall be entitled to apply to a court of

summary jurisdiction for an order under this sub-section, and on any such application the court may make one or more orders containing all or any of the following particulars:—

(a.) A provision that the applicant be no longer bound to cohabit with his wife (which provision while in force shall have the effect in all respects of a decree of judicial separation on the ground of cruelty);

(b.) A provision for the legal custody of any children of the marriage;

(c.) A provision that the applicant shall pay to his wife personally, or for her use to any officer of the court or other person on her behalf, such weekly sum not exceeding £2 as the court, having regard to the means both of the applicant and his wife, consider reasonable;

(d.) A provision for payment by the applicant or his wife, or both of them, of the costs of the court, and such reasonable costs of the parties or either of them as the court may think fit.

Subject to the foregoing provisions, the Summary Jurisdiction (Married Women) Act, 1895, shall apply to an application and order under this sub-section in like manner as it applies to an application and order under that Act, except that for references to a married woman and her husband shall be substituted references to a married man and his wife. 58 & 59 Vict. c. 39.

Provided that instead of making an order in pursuance of paragraph (a) of this sub-section the court may, with the consent of the wife, order her to be committed to and detained in any retreat licensed under the Inebriates Acts, 1879 to 1900, the licensee of which is willing to receive her; and such order shall have effect as if she had been admitted to the retreat under section ten of the Habitual Drunkards Act, 1879, as amended by any subsequent enactment, and the court may order an officer of the court or a constable to remove her to the retreat accordingly.

Prohibition of sale of liquor to persons declared to be habitual drunkards. 61 & 62 Vict. c. 60. 53 & 54 Vict. c. 45.

6.—(1.) Where upon the conviction of an offender the court is satisfied that an order of detention could be made under section one (*see* p. 70) or section two (*see* p. 71) of the Inebriates Act, 1898, then, whether an order of detention is made or not, the court shall order that notice of the conviction, with such particulars as may be prescribed by a Secretary of State, be sent to the police authority (within the meaning of the Police Act, 1890) for the police area in which the court is situate. (*See* p. 70.)

(2.) Where a court in pursuance of this Act orders notice of a conviction to be sent to a police authority, the court shall inform the convicted person that the notice is to be so sent (*see* pp. 20 and 72); and

(a.) If the convicted person within three years after the date of the conviction purchases or obtains, or attempts to purchase or obtain any intoxicating liquor at any premises licensed for the sale of intoxicating liquor by retail, or at the premises of any club registered in pursuance of the provisions of Part III. of this Act, he shall be liable, on summary conviction, to a fine not

exceeding, for the first offence, 20*s*., and for any subsequent offence 40*s*. (*see* pp. 20 and 73); and

(b.) If the holder of any license authorising the sale of intoxicating liquor by retail whether for consumption on or off the premises, or any person selling, supplying, or distributing intoxicating liquor, or authorising such sale, supply, or distribution on the premises of a club registered in conformity with the provisions of Part III. of this Act, within that period knowingly sells, supplies, or distributes, or allows any person to sell, supply, or distribute intoxicating liquor to, or for the consumption of, any such person, he shall be liable on summary conviction, for the first offence, to a fine not exceeding £10, and for any subsequent offence in respect of the same person, to a fine not exceeding £20. (*See* pp. 20 and 73.)

(3.) Regulations shall be made by the police authority for the purpose of securing the giving of information to licensed persons and secretaries of clubs registered under Part III. of this Act of orders made under this section, and for assisting in the identification of the convicted persons. (*See* pp. 20 and 73.)

Penalty for procuring drink for drunken person.

7. Any person who, being on any premises licensed for the sale of any intoxicating liquor, whether for consumption on or off such premises, shall procure, or attempt to procure, any intoxicating liquor for consumption by any drunken person, or who shall aid and abet any drunken person in obtaining or consuming any intoxicating liquor on any premises so licensed as aforesaid, shall be liable on summary conviction to a fine not exceeding 40*s*., or to imprisonment, with or without hard labour, for any period not exceeding one month. (*See* p. 67.)

Interpretation of "public place."

8. For the purposes of section twelve of the Licensing Act, 1872, and of sections one and two of this Act, the expression "public place" shall include any place to which the public have access, whether on payment or otherwise. (*See* p. 64.)

Part II.

Amendment of Licensing Law.

Record of conviction of licensed person.

9.—(1.) Where a licensed person is convicted before any court of any offence committed by him as such, it shall be the duty of the clerk of the licensing justices to enter notice of every such conviction, in the form prescribed by the Secretary of State, in the register of licenses kept by him, and if the clerk of the court is not the clerk of the licensing justices, he shall forthwith send notice of the conviction to the clerk of the licensing justices. (*See* p. 56.)

(2.) On any application for the grant, renewal, or transfer of a license the licensing justices shall have regard to any entries in the register of licenses relating either to the person by whom, or to the premises in respect of which, the license is to be held. (*See* p. 40.)

(3.) When a conviction relating to any premises is entered in the register of licenses, it shall be the duty of the clerk of the licensing justices to serve, in manner provided by the Licensing Act, 1872, notice of the conviction on the owner of the premises. (*See* pp. 46 and 56.) 35 & 36 Vict. c. 94.

(4.) After the commencement of this Act no conviction shall be recorded on a license. (*See* pp. 45, 57.)

Powers of justices as to retail off-licenses.

10.—(1.) Notwithstanding anything contained in section seventy-three of the Licensing Act, 1872, a justices' license shall be required in the case of every excise license under which intoxicating liquor may be sold by retail to be consumed off the premises. (*See* pp. 27, 28, 30.)

Provided that this sub-section shall not apply to any excise license taken out by a spirit dealer (*see* pp. 28, 30) or wine dealer (*see* pp. 27, 30) for premises which are exclusively used for the sale of intoxicating liquors, or of intoxicating liquors and mineral waters, or other non-intoxicating drinks, and which have no internal communication with the premises of any person who is carrying on any other trade or business. (*See* pp. 27, 28, 30.)

(2.) Notwithstanding anything contained in section eight of the Wine and Beerhouse Act, 1869, and in sections sixty-nine and seventy-four of the Licensing Act, 1872, the licensing justices shall be at liberty in their free and unqualified discretion, except as hereinafter provided, either to refuse a license for the sale of beer, wine, spirits, liqueurs, sweets, or cider, by retail, to be consumed off the premises, on any grounds appearing to them sufficient, or to grant a license to such persons as they deem fit and proper. (*See* p. 48.) 32 & 33 Vict. c. 27.

(3.) Any application for the grant of a license, to which this section applies, in respect of any premises on which the applicant was, at the commencement of this Act, authorised to sell beer, wine, spirits, liqueurs, sweets, or cider by retail to be consumed off the premises, shall be deemed to be an application for the renewal of a license, and shall be subject to the provisions of the Licensing Acts relating to the renewal of licenses. (*See* p. 34.)

(4.) Provided that where a license for the sale of wine, spirits, liqueurs, sweets, or cider, not to be consumed on the premises, was in force on the 25th day of June, 1902, an application for the renewal of such license, or of any license granted by way of renewal thereof from time to time, shall not be refused to the person who held such license on the 25th day of June, 1902, except on one or more of the grounds on which it might have been refused if this Act had not passed, or on the ground that the licensee has sold surreptitiously under such license, or has assisted in concealing or misrepresenting the nature of goods sold under such license, or has in any other way, in the opinion of the licensing justices, been guilty of misconduct in the management of his business under such license. (*See* pp. 48, 49.)

Control of justices over structure of licensed premises.

11.—(1.) Where a person is intending to apply for a new license for the sale of intoxicating liquors by retail to be consumed on the premises, he shall, not less than twenty-one days before the annual licensing meeting, deposit with the clerk to

the licensing justices a plan of the premises in respect of which the application is to be made. (*See* p. 42.)

(2.) Any alteration in any licensed premises for the sale by retail of intoxicating liquors to be consumed thereon, which gives increased facilities for drinking, or conceals from observation any part of the premises used for drinking, or which affects the communication between the part of the premises where intoxicating liquor is sold and any other part of the premises, or any street or other public way, shall not be made without the consent of the licensing justices assembled either at the general annual licensing meeting or at special sessions under section four of the Alehouse Act, 1828 (*see* p. 35), and the licensing justices may, before giving their consent, require plans of the proposed alterations to be deposited with their clerk at such time as they may determine (*see* p. 35); and if any such alteration is made, save under the order of some lawful authority, without such consent as aforesaid, a court of summary jurisdiction, on complaint, may by order declare the license to be forfeited, or direct that, within a time fixed by the order, the premises shall be restored to their original condition. (*See* pp. 35, 69.)

9 Geo. 4, c. 61.

(3.) Where a license is forfeited under this section the owner of the premises shall have all the rights conferred on owners by section fifteen of the Licensing Act, 1874. (*See* p. 39.)

37 & 38 Vict. c. 49.

(4.) On any application for the renewal of a license for the sale by retail of intoxicating liquors to be consumed on the premises, the licensing justices may require a plan of the premises to be produced before them, and to be deposited with their clerk, and on renewing any such license they may, by order, direct that, within a time fixed by the order, such alterations as they think reasonably necessary to secure the proper conduct of the business shall be made in that part of the premises where intoxicating liquor is sold or consumed (*see* p. 36), but any such order shall be subject to an appeal to a court of quarter sessions as provided by the Alehouse Act, 1828 (*see* p. 50), and if any such order for structural alteration is made and complied with, no further requisition for the structural alteration of the premises shall be made within the next five years (*see* p. 36). If the licensed person makes default in complying with any such order, he shall, on summary conviction, be liable to a fine not exceeding 20*s.* for every day during which the default continues. (*See* p. 70.)

(5.) Notice of any order under this section shall be forthwith given by the clerk to the owner of the premises in respect of which the order is made. (*See* pp. 35, 69.)

Removal of disqualification of justices interested in railways.

12. A justice shall not be disqualified to act for any purpose under the Licensing Acts, 1828 to 1886, or this Act, by reason only of his being interested in a railway company which is a retailer of intoxicating liquor. (*See* p. 44.)

Disqualifications of justices' clerks.

13. No solicitor or other person being a clerk of licensing justices, shall, by himself, his partner, or clerk, as solicitor or agent for any person, conduct or act in any application for or in respect of a license or any other proceedings whatsoever under the Licensing Acts at any licensing or petty sessions held for the district for which he is the clerk, except so far as relates to

the preparation of notices or forms, and if any person contravenes this provision he shall be liable on summary conviction to a fine not exceeding £100. (*See* p. 45.)

Date of annual licensing meeting.

14.—(1.) The general annual licensing meeting in every licensing district shall be held within the first fourteen days of the month of February in each year (*see* p. 31), and every adjournment thereof shall be held within one month of the date of the general annual licensing meeting. (*See* p. 31.)

(2.) The general annual licensing meeting which would, but for this Act, be held between the 20th day of August and the 14th day of September, 1902, shall not be held. (*See* p. 31.)

(3.) In every licensing district where the general annual licensing meeting would, but for this Act, be held between the 20th day of August and the 14th day of September, inclusive, all licenses within the meaning of the Licensing Acts, 1828 to 1886, and all billiard licenses (*see* p. 60), granted by the justices of the peace acting in and for any such district which are in force on the 10th day of October, 1902, shall, notwithstanding anything in such licenses or in the Licensing Acts, 1828 to 1886, to the contrary, upon production of such license to the clerk of the licensing justices and upon payment to him of half of the fees which would have been payable if that license had been renewed at a general annual licensing meeting held in August or September, 1902, be and remain in force until the 5th day of April, 1903, unless previously forfeited, or unless the person to whom or the premises in respect of which the license was granted is or become disqualified (*see* p. 31). Upon payment of the said fees, the clerk to the licensing justices shall endorse a note of the payment on the license. (*See* p. 32.)

(4.) The Commissioners of Inland Revenue may renew any excise license granted to any person holding a license granted by the justices of the peace acting in and for any such licensing district which was in force on the 10th day of October, 1902, upon production of that license, in the same manner as if that license had been renewed at a general annual licensing meeting held in August or September, 1902.

(5.) The justices of the peace acting in and for any such licensing district shall, on some day within the month of October, 1902, hold a special meeting, and shall at that meeting appoint not less than two nor more than four special sessions to be holden in the division during the period between the date of that meeting and the 1st day of February, 1903, at periods as near as may be equally distant, and at any such special sessions the justices shall have the same powers and jurisdiction as if the said days had been appointed at a general annual licensing meeting in accordance with the provisions of section four of the Alehouse Act, 1828, and the Licensing Acts, 1828 to 1886, shall have effect accordingly, and any license granted at any such special sessions shall be in force until the 5th day of April, 1903, and no longer. (*See* p. 36.)

9 Geo. 4, c. 61.

(6.) This section shall not affect the power of the licensing justices under section eleven of the Wine and Beerhouse Act, 1870, to postpone to an adjourned meeting (whether held within one month of the date of the annual meeting or not) the con-

33 & 34 Vict. c. 29.

sideration of an application for the grant or renewal of a license, and the said section shall apply to all licenses in like manner as it applies to licenses under the Wine and Beerhouse Acts. (*See* p. 32.)

(7.) This section shall come into operation on the passing of this Act.

Restriction on protection orders.

15. Notwithstanding any enactment to the contrary, it shall not be lawful for a petty sessional court to authorise the sale of intoxicating liquor on any licensed premises until the holding of the next special sessions for the licensing district in which the premises are situate, unless the person making the application has, one week at least before the holding of the court, served on the superintendent of police for the district the like notice as is required in the case of an application for the transfer of a license. (*See* p. 38.)

Provided that in any case of urgency the aforesaid notice to the police may be dispensed with if, in the opinion of the court, such notice to the police has been given as is reasonable under the circumstances of the particular case. (*See* p. 39.)

Provisions as to transfer.

16.—(1.) In the case of an application for a license under section four or section fourteen of the Alehouse Act, 1828, the person holding the license and the person who it is proposed shall become the holder of the license shall attend at the special sessions at which the application is heard, and the agreement or other assurance, if any, under which the license is to be transferred and held shall be produced to the licensing justices (*see* p. 37), and, for the purpose of compelling the attendance of any such person, or any witness, the licensing justices shall have all the powers of a court of summary jurisdiction. (*See* p. 37.)

Provided that the licensing justices may, for good cause shown in any particular case, dispense with the attendance of either of such persons, or both. (*See* p. 37.)

(2.) For the purpose of preventing repeated applications the licensing justices may at the general annual licensing meeting make regulations determining the time which must elapse after the hearing of one application for a license under section four or section fourteen of the Alehouse Act, 1828, before another application under the said sections or either of them may be made in respect of the same premises (*see* p. 37). Provided that the justices may, in their discretion, for good cause shown, dispense with the observance of these regulations in any particular case. (*See* p. 38.)

9 Geo. 4, c. 61.

(3.) The provisions of sub-section two of section forty of the Licensing Act, 1872, as to notices of intention to transfer, shall apply to all cases of applications under section four or section fourteen of the Alehouse Act, 1828. (*See* p. 42.)

(4.) The provisions of sub-section four of section four of the Wine and Beerhouse Act, 1870, with respect to the adjournment of an application for a transfer, shall apply to all licenses in cases arising under section four or section fourteen of the Alehouse Act, 1828 (*see* p. 38); and where any such application is adjourned, and there is in force an authority granted under the Licensing Act, 1842, to sell intoxicating liquor on the licensed premises, such authority shall continue in force till the

5 & 6 Vict. c. 44.

hearing of the adjourned application (*see* pp. 38, 39), and the proper officer of Inland Revenue may give the like authority by indorsement on the excise license. (*See* pp. 30, 38.)

Occasional licenses.

17.—(1.) An occasional license shall not be granted except with the consent of a petty sessional court, and unless twenty-four hours at least before applying for that consent the applicant has served on the superintendent of police for the district notice of his intention to apply for the consent, setting out his name and address, the place and occasion in respect of which the license is required, the period for which the license is to be in force, and the hours to be specified in the consent of the justices (*see* p. 58). Provided that where there is no sitting of a petty sessional court within three days before the time when the license is required, and it is shown to the satisfaction of the justices hereinafter mentioned that it was not practicable to make an application to a petty sessional court, the consent may be given by any two justices acting for the division and sitting together, of which consent notice shall be sent to the superintendent of the police. (*See* p. 58.)

25 & 26 Vict. c. 22. 26 & 27 Vict. c. 33. 27 & 28 Vict. c. 18. 37 & 38 Vict. c. 49.

(2.) In section thirteen of the Revenue Act, 1862, section twenty of the Revenue Act, 1863, section five of the Revenue Act, 1864, and section nineteen of the Licensing Act, 1874, the consent required by this section shall be substituted for the consent in those sections mentioned. (*See* p. 58.)

(3.) Nothing in this section shall affect the provisions of section twenty-nine of the Licensing Act, 1872, which empower the local authority to extend the hours of closing on special occasions. (*See* p. 55.)

Additional notice of application for new license.

18. In addition to the notices required by the Licensing Acts, 1828 to 1886, to be given by a person intending to apply for a new license, that person shall, twenty-one days at least before the date of the general annual licensing meeting, serve on the clerk of the licensing justices notice of his intention, setting forth his name and address and a description of the license or licenses for which he intends to apply, and of the situation of the premises in respect of which the application is to be made. (*See* p. 41.)

Confirmation of licenses.

19.—(1.) An application for the confirmation of the grant of a license shall not be heard until twenty-one days at least have expired since the date of the grant of the license. (*See* p. 41.)

(2.) A justices' license to sell any intoxicating liquor for consumption only off the premises shall require confirmation in like manner as other licenses. (*See* p. 41.)

Costs of justice whose decision is appealed against to be paid out of the county or borough funds.

20. In every case of appeal against the decision of any licensing justice the court to which such appeal is made shall adjudge and order that the treasurer of the county or place in and for which such justice whose decision is appealed against shall have acted on the occasion when he gave such decision shall pay to such justice such sum as in the opinion of the court shall be sufficient to indemnify such justice from all costs and charges whatsoever to which such justice may have been so put, and which cannot be recovered from any other person, and the said treasurer is hereby authorised to pay the same, which shall be allowed to him in his accounts. The order of the appellate

court may be made either at the sessions when the appeal is heard, or at the next ensuing sessions, and the costs may be taxed either in or out of sessions. (*See* p. 51.)

Sessions not to be held in licensed premises.

21. From and after the 31st day of March, 1907, no meeting of justices in petty or special sessions shall be held in premises licensed for the sale of intoxicating liquors, or in any room, whether licensed or not, in any building licensed for the sale of intoxicating liquors; nor shall any coroner's inquest be held on such licensed premises where other suitable premises have been provided for such inquest.

Restaurant keepers' licenses.

22.—(1.) Notwithstanding anything contained in the Beerhouse Acts, no person being a keeper of a restaurant or eating-house, shall be disqualified for receiving a license under those Acts by reason only of the premises in respect of which he applies to be licensed not being a dwelling-house or of his not being the real resident holder and occupier thereof. (*See* pp. 29, 30, 46.)

4 & 5 Will. 4, c. 85. 3 & 4 Vict. c. 61.

(2.) In this section the expression "the Beerhouse Acts" means the Beerhouse Act, 1834, the Beerhouse Act, 1840, and any enactment amending those Acts. (*See* pp. 29, 30, 46.)

Naval and military canteens.

23. Notwithstanding any enactment to the contrary, it shall not be necessary for a person holding a canteen under the authority of a Secretary of State or of the Admiralty to obtain a justices' license or certificate to enable him to obtain or hold any excise license for the sale of any intoxicating liquor, and an excise license may be granted to any such person accordingly. (*See* p. 59.)

Part III.

Registration of Clubs.

Registration of clubs.

24.—(1.) The secretary of every club which occupies a house or part of a house or other premises which are habitually used for the purposes of a club, and in which any intoxicating liquor is supplied to members or their guests, shall cause the club to be registered in manner provided by this Act. (*See* p. 1.)

(2.) The registration of a club under this Act shall not constitute the club premises licensed premises, or authorise any sale of intoxicating liquor therein which would otherwise be illegal. (*See* pp. 14, 21.)

Mode of registration.

25.—(1.) The clerk to the justices of every petty sessional division shall keep a register of all such clubs within the division. (*See* p. 7.)

(2.) The register shall be in a form prescribed by the Secretary of State (*see* p. 8), and shall contain—

(a) The name and objects of the club;
(b) The address of the club;
(c) The name of the secretary;
(d) The number of members;
(e) The rules of the club relating to—
    (i) The election of members and the admission of temporary and honorary members and of guests;

(ii) The terms of subscription and entrance fee, if any;
(iii) The cessation of membership;
(iv) The hours of opening and closing; and
(v) The mode of altering the rules. (*See* pp. 5, 8.)

(3.) The secretary of every such club shall, in the month of January, 1903, and in the month of January in each succeeding year, furnish to the clerk to the justices a return, signed by the secretary, giving the above-mentioned particulars (*see* p. 5), together with a signed statement that there is kept upon the club premises a register of the names and addresses of the club members, and a record of the latest payment of their subscriptions. (*See* p. 6.)

(4.) Where after the commencement of this Act a new club requiring registration is about to be opened the secretary shall, before the opening of the club, furnish a return, signed by him, to the clerk to the justices giving the above-mentioned particulars. (*See* p. 6.)

(5.) The clerk to the justices shall keep the register of clubs corrected up to date in accordance with the returns furnished by the secretaries (*see* p. 8), and the register shall, at all reasonable hours, be open to the inspection of an inspector or superintendent of police, or an officer of the inland revenue, without fee, and of any person on payment of a fee not exceeding one shilling. (*See* p. 8.)

(6.) A fee of five shillings shall be payable to the clerk to the justices on each return made by the secretary of a club. (*See* pp. 7, 8.)

(7.) In the application of this section to Oxford, the Registrar of the Court of the Chancellor of the University shall be substituted for the clerk to the justices in the case of any club mainly composed of members past or present of the University. (*See* pp. 6, 7.)

Penalty for supplying or keeping liquor in unregistered club.

26.—(1.) If any intoxicating liquor is supplied or sold to any member or guest on the premises of an unregistered club, the person supplying or selling such liquor, and every person authorising the supply or sale of such liquor, shall be liable on summary conviction to imprisonment, with or without hard labour, for a term not exceeding one month, or to a fine not exceeding £50, or to both. (*See* pp. 1, 17.)

(2.) If any intoxicating liquor is kept for supply or sale on the premises of an unregistered club every officer and member of the club shall be liable on summary conviction to a fine not exceeding £5, unless he proves to the satisfaction of the court that such liquor was so kept without his knowledge or against his consent. (*See* p. 19.)

Supply of liquor for consumption off the premises.

27. Intoxicating liquor shall not be supplied in a club for consumption off the premises except to a member on the premises; and if any person supplies or obtains any intoxicating liquor in contravention of the provisions of this section, he shall be liable, on summary conviction, to a fine not exceeding £10. (*See* pp. 19, 61.)

Striking off register.

28.—(1.) Where a club has been registered in pursuance of this Act a court of summary jurisdiction on complaint in writing by any person may, if it thinks fit, make an order directing the

club to be struck off the register on all or any of the following grounds, namely—

(a) That the club has ceased to exist, or that the number of members is less than twenty-five; or
(b) That it is not conducted in good faith as a club, or that it is kept or habitually used for any unlawful purpose; or
(c) That there is frequent drunkenness on the club premises; or
(d) That illegal sales of intoxicating liquor have taken place on the club premises; or
(e) That persons who are not members are habitually admitted to the club merely for the purpose of obtaining intoxicating liquor; or
(f) That the club occupies premises in respect of which, within twelve months next preceding the formation of the club, a license has been forfeited or the renewal of a license has been refused, or in respect of which an order has been made that they shall not be used for the purposes of a club; or
(g) That persons are habitually admitted as members without an interval of at least forty-eight hours between their nomination and admission; or
(h) That the supply of intoxicating liquor to the club is not under the control of the members or the committee appointed by the members. (*See* pp. 9 *et seq.*)

(2.) For the purpose of determining whether a club is conducted in good faith as a club, the court shall have regard to the nature of the premises occupied by the club. (*See* p. 13.)

(3.) If the court grants a summons on the complaint, the summons shall be served on the secretary and on such other person, if any, as the court may direct. (*See* p. 10.)

(4.) Where the court makes an order striking a club off the register the court may, if it thinks fit, by that order further direct that the premises occupied by the club shall not be used for the purposes of any club which requires registration under this Act for a specified period, which may extend to twelve months in case of a first order or in case of a second or subsequent order to five years (*see* p. 12); provided that any such direction may, for good cause shown, be subsequently cancelled or varied by the court. (*See* p. 12.)

(5.) In the application of this section to Oxford, the court of summary jurisdiction shall be the Court of the Chancellor of the University sitting and acting under the Oxford University (Justices) Act, 1886, in the case of any club mainly composed of members past or present of the University (*see* p. 10); provided that that court shall not have power to make an order that premises occupied by any such club shall not be used for the purposes of a club. (*See* p. 12.)

49 & 50 Vict. c. 31.

Search warrant.

29.—(1.) If a justice of the peace is satisfied by information on oath that there is reasonable ground for supposing that any registered club is so managed or carried on as to constitute a ground for striking it off the register (*see* p. 14), or that any intoxicating liquor is sold or supplied, or kept for sale or supply,

on the premises of an unregistered club, he may grant a search warrant to any constable named therein. (*See* p. 19.)

(2.) A search warrant granted under this section shall authorise the constable named therein to enter the club, if need be by force, and to inspect the premises of the club, to take the names and addresses of any persons found therein, and to seize any books and papers relating to the business of the club. (*See* pp. 15, 19.)

Penalty for false returns, &c.

30.—(1.) If the secretary of any registered club or any club which requires to be registered omits to make any return required by this Act he shall be liable on summary conviction to a fine not exceeding £20, and in the case of a second or subsequent offence to imprisonment, with or without hard labour, for a term not exceeding one month, or to a fine not exceeding £50, or to both. (*See* p. 16.)

(2.) If the secretary of any such club knowingly makes a return which is false in any material particular, he shall be liable on summary conviction to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding £50, or to both. (*See* p. 17.)

Application to London.

31. In the application of this Part of this Act to London, the clerk to a metropolitan police court shall be substituted for the clerk to the justices as regards any place within the jurisdiction of a metropolitan police court, and as regards the City of London the clerk of Special Sessions shall be so substituted. (*See* pp. 6, 7.)

Definitions.

32. For the purposes of this Part—

The expression "secretary" includes any officer of a club or other person performing the duties of a secretary, and in the case of a proprietary club where there is no secretary, the proprietor of the club (*see* p. 5); and

The expression "unregistered club" means a club which requires under this Act to be registered but is not registered, or which has been struck off the register. (*See* p. 18.)

Part IV.

Supplemental.

Repeal.

33. The enactments specified in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Short title, construction, extent, and commencement.

34.—(1.) This Act may be cited as the Licensing Act, 1902, and may be cited and shall be construed as one with the Licensing Acts, 1828 to 1886.

(2.) This Act shall not extend to Scotland or Ireland.

(3.) This Act, save as otherwise expressly provided, shall come into operation on the 1st day of January, 1903.

SCHEDULE.

Section 33. *Enactments Repealed as to England.*

Session and Chapter.	Short Title.	Extent of Repeal.
9 Geo. 4, c. 61	The Alehouse Act, 1828.	In section one, the words from "and such meetings" to "September inclusive." In section three, from "and that every adjournment" to the end of the section. In section thirteen the words "in the counties of Middlesex and Surrey," the words "and elsewhere from the tenth day of October," and the word "respectively." In section fourteen the words "or the tenth day of October," and the words "as the case may be."
35 & 36 Vict. c. 94.	The Licensing Act, 1872.	Section thirty. Paragraphs (1) and (2) of section thirty-one. Sections thirty-three and thirty-four. In section forty-eight the words "but in the latter case there shall be endorsed on such copy all convictions made within the previous five years which are endorsed on the old licence." Sections fifty-five and fifty-seven. In section fifty-eight the words "every endorsement upon a licence, and," and the words "endorsement and."
37 & 38 Vict. c. 49.	The Licensing Act, 1874.	Section thirteen. Section fourteen, from "and may be directed" to the end of the section. Section twenty-four.
43 Vict. c. 6.	The Beer Dealers Retail Licences Act, 1880.	The whole Act.
44 & 45 Vict. c. 58.	The Army Act.	Section one hundred and seventy-four.
45 & 46 Vict. c. 34.	The Beer Dealers Retail Licences Amendment Act, 1882.	The whole Act.

FORM OF REGISTER OF CLUBS.

THE LONDON GAZETTE, OCTOBER 24TH, 1902.

THE LICENSING ACT, 1902.

2 EDW. 7, CAP. 28, SECT. 25.

I hereby prescribe the following Form of Register of Clubs under Part III. of the Licensing Act, 1902.

A. AKERS-DOUGLAS,
One of His Majesty's Principal
Secretaries of State.

Whitehall, 16*th October*, 1902.

REGISTER OF CLUBS

In the { Petty Sessional Division / Borough } of ——— in the county of ——— in which intoxicating liquor is supplied to members or their guests.

Register

In form prescribed by the Secretary of State to be kept in pursuance of sect. 25 of the Licensing Act, 1902 (2 Edw. 7, c. 28).

Facilities for Inspection of Register.—Sub-sect. 5 of the above quoted section enacts that:—

"The clerk to the justices shall keep the register of clubs corrected up to date in accordance with the returns furnished by the secretaries, and the register shall, at all reasonable hours, be open to the inspection of an inspector or superintendent of police, or an officer of the Inland Revenue, without fee, and of any person on payment of a fee not exceeding one shilling."

List of the Clubs

Registered in the { Petty Sessional Division / Borough } of ——— in compliance with sect. 25 (1) of the Licensing Act, 1902.

Name of Club.	Page.

Note.—When a Club is struck off the Register, or ceases to be liable to registration, or ceases to exist, a line should be drawn through the name in this List.

REGISTER OF CLUBS

Within the { Petty Sessional Division / Borough } of ———.

Name of Club ———.
Address of Club ———.
Objects of the Club ———.

Date of first and of each subsequent Return.*	Date of first Registration and of each subsequent correction of Register.	Name of Secretary.	Number of Members.

* If the Club ceases to be liable to registration, or ceases to exist, or is struck off the Register under sect. 28 of the Licensing Act, 1902, a note giving particulars of the circumstances should be entered in the Register. The note should mention any directions made by the Court under sect. 28 (4) of the Act.

RULES

Of the Club relating to—

(i.) Election of Members, and the Admission of Temporary and Honorary Members, and of Guests:—
(ii.) Terms of Subscription and Entrance Fee, if any:—
(iii.) Cessation of Membership:—
(iv.) Hours of Opening and Closing:—
(v.) Mode of Altering Rules:—

ALPHABETICAL INDEX

Of the Clubs comprised in this Register.

Name of Club.	Page.

NOTE.—When a Club is struck off the Register, or ceases to be liable to registration, or ceases to exist, a line should be drawn through the name in this Index.

[Since going to Press the following Forms have been prescribed by the Home Secretary (see pp. 56 and 70).]

LICENSING ACT, 1902 (2 EDW. VII. c. 28).

SALE OF LIQUOR TO HABITUAL DRUNKARDS.

Particulars of Notice of Conviction to be sent to the Police Authority prescribed by the Secretary of State under sect. 6 of the Licensing Act, 1902.

Date of Conviction.	Date of Order directing notice to Police Authority.	Name of Person convicted.	Age.	Address of Person convicted.	Place of Business or where employed.	Offence of which convicted.	Sentence.	Licensed Premises or Clubs usually frequented (if known).

———, *Clerk to the Justices for the* { ——— *Petty Sessional Division.* / *Borough of* ———. }

REGISTER OF LICENCES.

Form of Entry of Conviction of Licensed Person, prescribed by the Secretary of State under sect. 9 (1) of the Licensing Act, 1902.

Name of Licensee.	Address of Premises and Sign.	Name and Address of Owner.	Date of Licence (Grant or Transfer).	Description of Licence.	Conditions of Licence (if any).	Date of Conviction.	Offence of which convicted.	Sentence or Order made.

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THE END.

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